1131.

SUPREME COURT OF THE UNITED STATES.

No. 141.

CHARLES H. McBLAIR, ADMINISTRATOR OF LYDE GOODWIN,

vs.

ROBERT M. GIBBES AND CHARLES OLIVER, EXECUTORS OF ROBERT OLIVER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable R. B. Taney, chief justice of the Supreme Court of the United States; William F. Giles, judge of Maryland district; Wm. Meade Addison, esquire, attorney; John W. Watkins, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

CHARLES H. MCBLAIR, adm'r of Lyde Goodwin,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, Ex'ors of Robert Oliver.

Be it remembered that heretofore, to wit, on the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-two, the said Robert M. Gibbes and Charles Oliver, executors as aforesaid, by Reverdy Johnson and James M. Campbell, their solicitors, filed in the circuit court here the transcript of a record from the superior court of Baltimore city, in the words and of the tenor following, to wit:

STATE OF MARYLAND,
City of Baltimore, to wit:

At a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, begun and held at the court-house, in and for the city aforesaid, on the second Monday in September, being the thirteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-two, were present the honorable William Frick, judge; John Hayes, esquire, sheriff; Edward Dowling, clerk.

In the record of the proceedings of the said court, among others were the following, to wit:

CHARLES H. MCBLAIR, adm'r of Lyde Goodwin,
vs.
ROBERT M. GIBBES AND CHARLES OLIVER, surviving ex'ors of Robert Oliver.
} Injunction, &c.

Be it remembered that heretofore, to wit, on the twenty-first day of August, in the year eighteen hundred and fifty-two, come into the su-

perior court of Baltimore city, sitting as a court of equity, the said Charles H. McBlair, administrator of Lyde Goodwin, deceased, the complainant in this suit, by Grafton L. Dulany and Henry W. Davis, esquires, his solicitors, and exhibited his bill of complaint against the said Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, the defendants, in form following, to wit:

To the honorable William Frick, judge of the superior court of Baltimore city.

The bill of complaint of Charles H. McBlair, administrator of Lyde Goodwin, deceased, humbly shews: That said Lyde Goodwin, together with certain other persons, associated under the name of the Mexican Company of Baltimore, had, in the year eighteen hundred and twenty-five, a claim against the Mexican republic for the sum of one hundred and sixty thousand five hundred and sixty-three dollars and seventy-two cents, under the decrees of the Congress of Mexico, of the day of , 1823, and of the 28th day of June, 1824, upon certain precedent considerations; and the share of said Goodwin in such claim was one undivided ninth part.

That said Goodwin being greatly embarrassed for money, and also indebted to Robert Oliver in a considerable sum hereinafter stated, proposed to said Robert Oliver, by letter, dated Jan'y 11, 1825, to borrow from him the sum of two thousand dollars, and to assign to said Robert Oliver the aforesaid share of Goodwin in the claim of the Mexican Company, to secure as well the two thousand dollars then asked as his then existing debt.

The said Robert Oliver acceded to that proposal; advanced at sundry times between the 15th February, 1825, and the 1st of June, 1825, the sum requested, and took an assignment for the securing of the said debts on or about the 21st day of March, 1825.

That on the 22d day of March, 1825, the various members of said Mexican Company, or the assignees of members, together with said Lyde Goodwin, executed a power of attorney to said Robert Oliver, investing him with full power to prosecute and recover the said claim from the Mexican government; which power and duty said Robert Oliver, who was then deeply interested by assignment from other members of said company, accepted and entered on the performance of.

That said Lyde Goodwin was also entitled, under an agreement with the original members of said company, to a commission of five per cent. for his services as agent of said company on the amount recovered by said company; which said claim of five per cent. is evidenced by the letter of the members or assignees of members of the company, entered on their books and directed to said Oliver, authorizing him to pay to said Goodwin such commission when the fund should be recovered; which letter bears date the 21st day of March, 1825.

That on the 30th of May, 1829, the following agreement was entered into between the said Lyde Goodwin and Robert Oliver:

"Being indebted to Robert Oliver, of Baltimore, upwards of nine

thousand dollars, I hereby assign, transfer, and set over to the said Robert Oliver, in payment of my said debt to him, the following objects which were assigned to him many years ago to secure the payment of the said debt due by me, to wit: all my undivided ninth part, right, title, and interest of every kind whatever, in the claim on the government of Mexico for supplies furnished and advances made the late General Mina, or the proceeds thereof, and which claims are under the control of said Robert Oliver and his agent, John Mason, jr., now in Mexico; also, a claim on a certain Louis Mervin, who died some years ago in Havana. The object and intention of this agreement is, to make a full and complete transfer to said Robert Oliver of all my right, title, and interest aforesaid, as aforesaid, for which the said Robert Oliver has agreed to balance my account on his books, and to consider the same as satisfactorily settled. And I hereby authorize and order all my agents, or those holding powers of attorney, or instructions from me relative to the aforesaid property, to account with the said Robert Oliver for the same, or the proceeds thereof.

Baltimore, 30th May, 1829.

L. GOODWIN.

Witness—JOHN THOMAS.

I confirm the above agreement.

ROBERT OLIVER.

That the said agreement of 30th May, 1829, was made upon no new consideration, was extorted from the necessities and embarrassments of the said Lyde Goodwin, who was then deeply indebted, and utterly without means to pay his debts, and that such agreement was void and inoperative for the purpose of foreclosing the pre-existing mortgage or assignment by way of security of the interest of said Goodwin in the claim of the Mexican Company; that it was void for every purpose relative to transferring a valid and absolute title to any part of the claims therein specified; and that after, as well as before such agreement, said Oliver continued to hold the claims so transferred merely as mortgagee and by way of security for the debt due at the date of the first assignment, and subject to account with said Lyde Goodwin, whenever said funds should be realized.

That the United States of America, on the 11th day of April, 1839, having concluded a treaty with the Republic of Mexico, for the liquidation and adjustment of the claims of the American citizens on that republic, a commission was duly created and organized under that treaty and under act of Congress passed to carry it into effect, for the purpose of deciding on what claims were, and were not, valid against the Mexican republic.

That John Glenn and David M. Perine were, by deed dated May 8, 1841, constituted by the members, or the assignees of the members, of the said Mexican company, or their representatives, trustees to whom the said claim of said Mexican Company was assigned; to have and to hold the same to the said Glenn and Perine, in trust to receive said

claims, and all and every the proceeds thereof, and the same when received to deposit in the Mechanics' Bank of Baltimore, and there to remain until the same be divided and distributed, according to the rights of the parties respectively claiming or to claim any part of the same.

That said Glenn and Perine accepted the said trust, prosecuted said claim, till finally, on the 9th day of June, 1841, the said Board of Commissioners for adjusting claims of American citizens on Mexico, under the treaty aforesaid, awarded the whole of the said claim of the Mexican Company to the parties claiming it; that is to say, one ninth thereof to Philip E. Thomas and John White, as trustees of Dennis Smith, a member of said company, and the other eight ninths, including the interest of said Goodwin, to the said Glenn and Perine, with interest thereon, from the 15th day of April, 1817, as trustees for Robert Oliver's legal representatives, and whomsoever it might concern; and the amount so awarded for and on account of the claim of the Mexican Company was the sum of one hundred and sixty thousand, five hundred and sixty-three dollars and $\frac{72}{100}$, with 5 per cent. interest from 15th April, 1817.

That upon a suit for the distribution of the funds so awarded, brought in Baltimore county court by Philip E. Thomas and John White against the said John Glenn and David M. Perine, and others, on the 4th of October, 1841, such proceedings were had that on the petition of the executors of Robert Oliver, claiming under the assignment from Goodwin to said Oliver above mentioned, the share of one ninth of the said claim of the Mexican Company so awarded as above, of the said Lyde Goodwin, as well as the commission of five per cent. due him under his agreement with the members of the Mexican Company as their agent, were decided to be paid over to the said Robert M. Gibbs and Charles Oliver by the said John Glenn and David M. Perine, trustees as aforesaid.

That the said Robert M. Gibbs and Charles Oliver, executors of Robert Oliver, deceased, on or about the 11th day of April, 1850, actually received themselves, or by their agents or assignees, the whole of the funds awarded for and on account of the said share of Lyde Goodwin of one-ninth as partner in said Mexican Company, and for and on account of the commission of 5 per cent. of said Lyde Goodwin on the amount recovered, the following stocks of money, the same being the amount originally awarded, with the interest and accumulations from its investment, pending the litigation in the suit aforesaid touching the distribution thereof.

On account of the sum decreed to Lyde Goodwin's legal representatives, for the 5 per cent. commission aforesaid:

$2,575 23 of United States five per cent. loan, at -	$2,575 23
$20,160 43 of United States six per cent. loan, at -	21,523 26
In money, - - - - - - - - - -	1,952 23
Total on account of commission, - - - -	$26,050 72

On account of the share of ¼ as partner:	
$3,998 55 of United States five per cent. loan, at -	$3,998 55
$32,093 03 of United States six per cent. loan, at -	34,262 24
In money, - - - - - - - - - -	3,045 64
Total on account of the share, - - - - -	$41,286 43

Making the whole amount received under said decree by said executors, sixty-seven thousand three hundred and thirty-seven dollars and fifteen cents, ($67,337 15.)

That for the whole of this fund, with the accumulations of interest and dividends and the increase of the stock, the said executors of Robert Oliver are trustees for your orator as the legal representatives of Lyde Goodwin, subject to the deduction of the debt of said Goodwin to said Robert Oliver, at the date of the assignment of 1825, with interest thereon, and the expenses subsequent, after deducting any credits derived from the said Mexican debt in the assignment of 1829 mentioned.

That by the true construction of the agreement of May 30, 1829, between said Robert Oliver and Lyde Goodwin, nothing was intended to be covered but what had formerly at some time or other been assigned by said Goodwin to said Robert Oliver to secure the said debt; and that whatever object or fund shall appear by the true construction of said agreement to be included in and covered by it, was actually assigned before its date, by way of mortgage, to secure the said debt.

That among the objects so distinctly specified is "a claim on a certain Louis Mervin, who died some years ago in Havana."

That said claim was a considerable amount, but the precise nature and amount thereof are unknown to your orator, and can only be ascertained by the discovery of the said defendants.

That he is informed, and so charges, that such claim originated in a shipment of coffee, or other merchandise by said Goodwin to said Mervin as consignee; the proceeds whereof were received by said Mervin or his agent.

That long prior to the decree for the payment aforesaid of Goodwin's share and commissions to said Oliver, and in the lifetime of said Oliver, the said proceeds of said cargo, or a large part thereof, came into the hands of said Oliver, the testator, or to the hands of his agents; and that prior to said assignment of May 20, 1829, a great part or the whole of the proceeds of said Mervin claim had been received or secured by the agents of said Robert Oliver, in Havana or in Cuba, on account of the said debt of said Goodwin; but whether by legal process or prior assignment is unknown, and said Goodwin was ignorant of such receipt on the 20th of May, 1829.

That said fund had been for some years, and probably from about the year 1821, in the hands or under the control of Antonio de Frias & Company, of Cuba, who had been ordered to attach the said claim for the debt of said Goodwin; and who, either under an attachment, or by arrangement with said Mervin, retained said claim for the benefit

of said Oliver; but the date, and time and mode of such receipt or payment your orator has no adequate means of establishing otherwise than by the discovery of the said executors.

That whatever the amount so received by said Oliver, or by his agents, from the date of the reception by either, the law applied it in extinguishment of so much of the interest and debt as it would cover at that date, leaving only the balance due thereafter to be paid out of the Mexican claims, or such part of the same as might be covered by the assignment.

That the debt loosely stated in the agreement of May 20, 1829, at upwards of nine thousand dollars, was in fact considerably overstated, and, according to the best information of your orator, did not exceed the amount of the several sums following—that is to say, a draft of $2,000 drawn by said Goodwin on said Louis Mervin in 1820, with interest on $1,200 thereof from 31 October, and on the $800 residue from the 2d November, 1820, and a promissory note for $1,500 loaned on the 13th July, 1819, and one for $500 loaned on the 9th August, 1819, with interest from those dates respectively, and the $2,000 advanced at or about the time of the assignment of 1825, and on the faith thereof, as security.

That the funds covered by the assignment of 1825, and the agreement of 1829, are bound only for the payment of these claims, and that the proceeds of the Mexican claim received prior to or in 1830 had fully or in much the greater part paid the said debt.

That it was unconscionable and oppressive in said Robert Oliver to exact from the said Goodwin a final and absolute transfer of all his interest in the large claim against Mervin, then already in the power of Oliver or his agents, and the vast claim against the Mexican government, in satisfaction of a debt of such comparative insignificance as the above, and that a court of equity will regard the overstatement of the sum due in the agreement of 1829 as one of the strongest badges of that oppressive dealing between a strong creditor and a defenceless debtor, large equities of redemption for present peace, against which it is its peculiar and grateful province to relieve.

That as to the commission of 5 per cent. awarded by the court to Goodwin's legal representatives, the said Robert Oliver had no title whatever, unless under some assignment by way of security for said debt it had been transferred to him prior to the agreement of 1829; and if any such assignment by way of security were made, the said executors of Oliver are required to produce it; but if no such assignment were made, then the said claim for the commission of 5 per cent. must be excluded from the purview of the agreement of 1829, and the general words which might be relied on as including it must be confined to the subject-matter of the share and its proceeds in the agreement specified; and if it be construed to be covered and included by the legal import of said agreement in the absence of the production and proof of a prior assignment by the executors, the legal effect of the same agreement is to operate as the statement of both parties to it of

the previous existence of an assignment passing the claim to commissions by way of security for said debt; which statement cannot be controverted by the executors, but must be acted on by the court as the formal agreement of the parties.

That the amount of the claim for commission reported by the auditor in favor of Goodwin's legal representatives was awarded to the said executors in the said suit for the adjustment of the accounts and distribution of the assets of the Mexican Company in the absence of said Goodwin, and after his death, and before any administration had been taken out on his estate; and because the award of the commission had vested the fund in Glenn and Perine, as trustees for the executors of Robert Oliver, and whomsoever else it might concern, and the claim of said executors as against said trustees was the best apparent claim presented in the absence of Goodwin's personal representatives, or because *the* that fund was supposed to have passed under the assignment by way of security for Oliver's debt, and so was taken to be covered by the agreement of 1829, which agreement does not appear to have been a matter of controversy in said suit on the allegations now urged against it; and by that decree this complainant is in no manner bound so far as it purports to settle the title to said fund.

That, besides the said commission so awarded by the decree, the executors of Oliver have, under similar pretexts and claims of title since said decree, received from the United States the said commission due Lyde Goodwin on the one-ninth of the Mexican claim of the company of Thomas Sheppard, one of the members of said company, whose share was retained by the United States for a debt due them by said Sheppard, which payment was made on the ground that the five per cent. belonged to Goodwin, and formed no part of Sheppard's estate; but the precise amount of such payment, and of the interest, dividends, and accumulations of the various investments thereof can be known only by the discovery of said executors, and to an account of this payment your orator is also entitled.

That the deed of 8th May, 1841, to Glenn and Perine, transferred the claim of the Mexican Company to them as trustees for the parties claiming or to claim the same, whether parties thereto or not, said deed being from the survivors or the assignees of the survivors of said company; and the said deed made such funds received by the trustees, and by them invested and reinvested, with all the accumulations, exclusively the subject of equitable cognizance, before which tribunal alone could the partnership accounts of said company be adjusted; and the partnership of trust funds having gotten into the hands of said executors, they are bound to account for the stocks and money of the share and commissions, and to compel them to account therefor, because the same were partnership assets distributable only after account, because part or all had been mortgaged, and the said Goodwin had a right to redeem; and because, having been vested in trustees to be distributed according to the rights of parties claiming or to claim them, the funds and stock may be pursued into the hands of the executors of Oliver

as trust property improperly obtained by them, and on no other grounds of equity jurisdiction apparent from the circumstances of the case.

That the interests of all the other members of said company were ascertained in said suit, and though the decree and accounts therein are not binding on your orator, yet he is willing to abide by and accept the said accounts as a fair adjustment of the shares and interests of the several parties to said suit, reserving only the right to claim the share and commissions of Lyde Goodwin, to the extent and in the manner hereinbefore set forth.

That the said Robert Oliver departed this life on the day of September, in the year 1835, having first duly published his last will, whereby he appointed Robert M. Gibbs, Charles Oliver, and Thomas Oliver, executors of his will.

That said executors duly qualified as such, but said Thomas Oliver has since departed this life, leaving said Robert M. Gibbs and Charles Oliver sole surviving executors of the said will.

That Lyde Goodwin departed this life on the day of , about the year 1843, intestate, and administration was on the 13th day of March, 1852, granted by Baltimore city orphan's court to your orator, who duly qualified under such appointment.

That many of the facts and circumstances before stated can be proved only by the discovery of the said executors, and that the facts stated, touching the said Mervin claim, as amount and the time it was received, and when it first came to the hands of said Robert Oliver or his agents, and how it so came to their hands, and the amount and nature and particulars of the debt due by Goodwin to Oliver, can only appear from the discovery of said executors, and the production of the books and papers and correspondence of said Robert Oliver relating thereto, now in their hands or within their power.

That your orator has demanded of the said executors of Robert Oliver an account of the proceeds of the share and commissions of the said Lyde Goodwin, in the said Mexican Company's claim, so by them received, subject to the debt of said Goodwin to said Oliver, and of the said claim on Louis Mervin, and the payment to him of whatever balance should appear due, and a transfer in kind of the several stocks or certificates of loan of the United States, by said executors received on the above accounts.

And your orator well hoped they would have complied with such his reasonable requests.

But now so it is, may it please your honor, the said Charles Oliver and Robert M. Gibbs, contriving and intending to defraud and injure your orator, have wholly refused so to do.

In tender consideration whereof, and for as much as your orator is wholly remediless at common law, and can find adequate relief only in a court of equity where such matters are properly cognizable and relievable:

To the end, therefore, that the said Robert M. Gibbs and Charles Oliver may true, full, and perfect answer make to the allegations

aforesaid, as fully and particularly as if the same were here repeated, and they thereto particularly interrogated.

And in particular that they may state what was the real amount and nature of the debt due from said Lyde Goodwin to Robert Oliver at the date of the assignment of 1825, and of the agreement of 1829; and how the same arose, and when the claim of Goodwin on said Mervin was first attached, or ordered to be attached, and when the proceeds of said claim first came into the hands of the said Frias and company in Cuba; and what was the nature and amount of said claim, and how much was by said Oliver received on account thereof, and when; and what was the amount by the executors received from the United States on account of Goodwin's 5 per cent. on the one ninth of the claim of the Mexican Company belonging to said Thomas Sheppard, and by the United States received for his debt; and when was it received, and how much in stocks, and how much in money, and at what rates were such stocks, and what dividends or interest has been received.

And that they may set forth a schedule of the books and papers, and letters of said Robert Oliver, touching said Mervin's claim and his title thereto, and the time, and mode, and amount of his receipts on account thereof; and that they may be compelled to produce all such books and papers as well relative to said claim as to all other the dealings aforesaid between said Robert Oliver and Lyde Goodwin, for the inspection of your orator and of the court.

And that the said agreement of 30th May, 1829, may be decreed to be void as an absolute assignment and foreclosure of the several objects therein specified and declared to have been previously assigned to said Oliver by way of security for the debt of said Goodwin, and that said instrument may be decreed to be only a mortgage of such object for securing such debt.

And that an account may be directed of the debt of the said Goodwin to said Oliver, and of the funds received or which, but for his default, might and should have been received from said Mervin claim by said Oliver, applicable to said Goodwin's debt, and of the stocks, dividends, interests, and money received by said executors on account of the share of one-ninth of the said Lyde Goodwin in the assets of said Mexican Company, and on account of the commission of 5 per cent. on the whole amount of the assets of said company due said Goodwin.

And that said claim to commissions may be decreed not to have passed at all under the said agreement of 1829, or if it did pass, that it passed only by way of security under some precedent assignment.

And that the said debt being deducted, the said executors may be decreed to transfer to the complainant all the stock or certificates of loan by them received on account of the share and commissions aforesaid of said Goodwin, and to pay all the money by them received on that account, and also all dividends on said stock and loan and interest on said money.

And that your orator may have such other relief as the circumstances

of the case may require and may be equitable—may it please your honor to grant to your orator the writ of the State of Maryland of subpœna to the said Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver, deceased, commanding them to appear in this court on some certain day to be therein named, to answer the premises and abide and perform such decree as may be passed therein; and as in duty bound, &c.

G. L. DULANY,
HENRY WINTER DAVIS,
Sol'rs for complainants.

Whereupon issued subpœna as prayed, as follows, to wit:

The State of Maryland, to Charles Oliver and Robert M. Gibbes, [Seal's place.] surviving executors of Robert Oliver, deceased, of Baltimore city, greeting:

We command and enjoin you, that, all excuses set aside, you be in your person before the judge of the superior court of Baltimore city, at the court-house in said city, on the first day of September next, to answer the complaint of Charles H. McBlair, administrator of Lyde Goodwin, deceased, against you in the said court exhibited. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable William Frick, judge of our said court, the first day of July, in the year of our Lord eighteen hundred and fifty-two. Issued 21st day of August, 1852.

EDW'D DOWLING, *Clerk.*

At which first day in September, to wit, in the year eighteen hundred and fifty-two, being the return day of the aforegoing subpœna, the same was returned to the court here with the following endorsements thereon, and certificate thereto annexed, to wit:

STATE OF RHODE ISLAND, *Newport, ss.*

NEWPORT, *August 27th*, 1852.

I have this day made service of this subpœna by reading the same to the within named Robert M. Gibbes, in his presence and hearing.

Test: HENRY W. ROGERS.

NEWPORT, *sc.*

NEWPORT, *August 27th*, 1852.

Then personally appeared before me the above named Henry W. Rogers, and made oath in due form of law, that the above named service was made as above stated.

WM. GILPIN, *Just. peace.*

STATE OF RHODE ISLAND, &c., *Newport, sc.*

Clerk's office, C. C. Pleas.

I, Daniel C. Denham, clerk of the court of common pleas, within and for the county of Newport, do hereby certify, that William

Gilpin, before whom the annexed affidavits were made, was, at the said time, a justice of the peace within and for the county of Newport, duly authorized by law to administer oaths, and the signature affixed to the same is his own proper handwriting.

In witness whereof, I have hereunto set my hand, and affixed [Seal's place.] the seal of said court this 27th day of August, A. D. 1852.

DANIEL C. DENHAM, *Clk.*

The said cause, so standing, was continued until the first day of October then next. At which said term, to wit, on the second day of October, in the year aforesaid, the said defendants, executors, as aforesaid, appear in court here by Reverdy Johnson and James Mason Campbell, esquires, their solicitors.

And on the same second day of October, to wit, at the time of entering the appearance of the said defendants as aforesaid, the said defendants' executors, as aforesaid, exhibited to the court here, and filed in said cause, the following petition and bond for removal of said cause, &c., to wit:

In the superior court of Baltimore city.

CHARLES H. MCBLAIR, administrator of Lyde Goodwin, vs. ROBERT M. GIBBES and CHARLES OLIVER, executors of Robert Oliver. } In equity.

To the honorable William Frick, judge of the superior court of Baltimore city, sitting in equity.

The petition of Robert M. Gibbes and Charles Oliver, the defendants in the above entitled cause, showeth:

That a bill in equity hath been filed in this court, and is now pending therein, against your petitioners as executors of Robert Oliver, by Charles H. McBlair, administrator of Lyde Goodwin.

That a subpœna hath issued on said bill and been served on your petitioner, Gibbes, out of the State of Maryland.

That the complainant in said bill is a citizen of the State of Maryland, and the defendants therein (your petitioners) citizens of the State of New York.

That the matter in dispute in said bill exceeds the sum or value of five hundred dollars, exclusive of costs.

That your petitioners desire, under the act of Congress in such case made and provided, to remove said cause into the circuit court of the United States, for the district of Maryland, forthwith.

And they herewith offer and file bond, with good and sufficient security, for entering in the said circuit court, at its next session, copies of the process aforesaid against them, and also for their there appearing.

And they pray that such bond may be accepted and approved by

this court, and that this court will proceed no further in said cause, and that they may have all such other and further relief as their case demands.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Solicitors for pet'rs.

Know all men by these presents, that we, Robert M. Gibbes, of the [State stamp, $6] city and State of New York, and Columbus O'Donnell and David M. Perine, of the city of Baltimore, and State of Maryland, are held and firmly bound unto Charles H. McBlair, administrator of Lyde Goodwin, in the full and just sum of eighty thousand dollars, to be well and truly paid to the said Charles H. McBlair, administrator as aforesaid, his executors, administrators, and assigns, to which payment well and truly to be made we hereby bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, this thirtieth day of September, A. D. 1852.

The condition of this obligation is such, that if the said Robert M. Gibbes and Charles Oliver shall enter into the circuit court of the United States, for the district of Maryland, at its next session, copies of the process issued against them as executors of Robert Oliver, out of the superior court of Baltimore city on its equity side, at the suit of the said Charles H. McBlair, administrator as aforesaid, and shall appear in said court in such case, this obligation shall be void, or otherwise to remain of full force and virtue.

R. M. GIBBES, [SEAL.]
COLUMBUS O'DONNELL, [SEAL.]
D. M. PERINE, [SEAL.]

Signed, sealed, and delivered, by Robert M. Gibbes, in presence of—
WILLIAM H. PECKHAM.

And by Columbus O'Donnell and David M. Perine, in presence of—
J. MASON CAMPBELL.

On the back of said bond is thus endorsed, to wit:

"October 2nd, 1852, bond approved.

WM. FRICK."

And it appearing to the satisfaction of the court here, that the allegations in the said petition are true, and that the bond, with security given for the performance of the requirements set forth and expressed in the condition thereof, being deemed good and sufficient, and accepted by the court, the court thereupon pass and file in said cause the following order, to wit:

The requisite bond being approved by the court, and filed in this cause, the court will proceed no further therein, as provided in such case by the act of Congress.

WM. FRICK.

Superior court, October 2, 1852.

Whereupon, the above cause, and all the proceedings therein, are hereby removed into the circuit court of the United States, as prayed.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify, that the foregoing is a full and true transcript taken from the record of proceedings of the superior court of Baltimore city, in the cause therein mentioned.

In testimony whereof, I hereto set my hand, and affix the seal of the said court, this eleventh day of October, anno Domini eighteen hundred and fifty-two.

[Seal's place.]

EDW'D DOWLING,
Clerk superior court of Baltimore city.

Afterwards, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-two, the said Robert M. Gibbes and Charles Oliver, executors as aforesaid, by their solicitors aforesaid, filed in the circuit court here their answer and exhibits thereto, to the bill of complaint of the said Charles H. McBlair, administrator of the said Lyde Goodwin, in the words and of the tenor following, to wit:

In the circuit court of the United States, for the Maryland district.

CHARLES H. MCBLAIR, administrator of Lyde Goodwin,
vs.
CHARLES OLIVER, ROBERT M. GIBBES, surviving executors of Robert Oliver, deceased.
} In equity.

To the honorable Roger Brooke Taney and John Glenn, judges of the circuit court of the United States for the Maryland district, sitting in equity.

The joint and several answer of Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver, to the bill of complaint of Charles H. McBlair, administrator of Lyde Goodwin.

These respondents, saving to themselves all exceptions to said bill, whether for form or substance, for answer nevertheless thereto, or to so much thereof as they are advised it is material for them to answer, do answer as follows:

They are informed and believe that Lyde Goodwin, the complainant's intestate, was a citizen of the State of Maryland, and a member of the Mexican Company of Baltimore, which was formed in that city in the year 1816, for the purpose of assisting, and which did assist General Mina to revolutionize Mexico, then a province of Spain, a country at the time in amity with the United States; and that the said company made a claim in the premises on the Mexican government, but these respondents do not know whether the decrees of that government mentioned in the bill were passed, or what was their purport.

They are also informed and believe that the said Goodwin's share of said claim was one-ninth, and that under a certain written agreement, dated 21st March, 1825, he was entitled to a commission of five per cent. upon the amount to be received by the company, as its agent for services, a copy of which agreement is herewith filed, marked O G, No. 1.

They are also informed and believe that on the 11th January, 1825, the said Goodwin wrote a letter to Robert Oliver, (their testator,) for the terms of which they refer to the letter itself, a copy of which is herewith produced, marked O G, No. 2; and that the said Robert Oliver paid to said Goodwin on the 15th February, 1825, $500; on the 24th March, 1825, $500; on the 13th April, 1825, $500; and on the 1st June, 1825, $500; and received from said Goodwin the two receipts, of which copies are herewith filed, marked O G, No. 3.

They are also informed and believe, that on the 22d March, 1825, a power of attorney was executed to and accepted by said Oliver, of which a copy is herewith filed, marked O G, No. 4.

They are also informed and believe that an assignment dated 30th May, 1829, of which a true copy is herewith filed, marked O G, 4½, was signed by said Goodwin and said Oliver, and they charge that the same, to the best of their information and belief, was made bona fide and for a valuable consideration appearing on the face thereof; and while they admit that said Goodwin was at the time unable to pay his debts, they deny that said assignment was extorted from his necessities, or that there was any fraud therein, and aver that it is valid and operative both in law and equity to every purpose contemplated by it, and that the value of what then conveyed was less at the time in amount than the debt which it discharged.

They are also informed and believe, that under a deed executed to John Glenn and David M. Perine, dated the eighth day of May, 1841, (a true copy of which is herewith filed, marked O G, No. 5,) the said Glenn and Perine prosecuted the claim of the Mexican company aforesaid, before the mixed commission which sat under the convention of 1839, between Mexico and the United States, and that an award was made by said commission in favor of said claim, a copy of which is herewith filed, marked O G, No. 6; and that said trustees received on the 26th Oct., 1841, the certificates for the payment of said Goodwin's interest from the government.

They are also informed and believe, that in a suit instituted on the equity side of Baltimore county court, in the year 1841, by Philip E. Thomas and John White, against Dennis A. Smith and others, the proceeds of said award were distributed, and that such proceedings were had therein upon an appeal to the court of appeals for the western shore of Maryland, that a decree was passed by said court at June term, 1849, a true copy whereof, and of the reasons thereof, is herewith filed, marked O G, No. 7; and that under process issued from said court to enforce said decree, the said Glenn and Perine paid to these respondents and Thomas Oliver, as executors of Robert Oliver, on the 11th April, 1850:

On account of Goodwin's commissions.

$2,188 95,	United States loan at	per cent. at -	$2,188 95
17,136 37	do. do.	6 per cent. - -	18,294 78
In money	- - - - -	-	1,659 39
			$22,143 12

On account of Goodwin's share in the Mexican Company.

$3,398 77	United States 5 per cent. loan at	- -	$3,398 77
27,279 08	do 6 per cent. do.	- -	29,122 90
In money	- - - - -	-	2,588 80
			$35,110 47

But these respondents deny that they hold the said amounts or any part thereof in trust for the complainant. They do not know, and have no information as to the amount of Goodwin's claim on Mervin mentioned in said assignment of 30th May, 1829, except so far as a draft for $2,000 on Mervin, drawn or passed to their testator in 1820 by Goodwin, shows that Goodwin assumed that amount to be in Mervin's hands, (though Mervin neither accepted nor paid it,) and except also so far as the settlement to be hereinafter detailed may warrant the supposition that there was a further amount of $3,850 62½ due by Mervin to Goodwin; the claim on Mervin was never settled by him, nor did he ever make any admissions or promises in regard to it so far as they know or are informed and believe. These respondents believe that it was in point of fact settled in 1830, by representatives of the mercantile house of Antonio De Frias and company, as is hereinafter stated, though the settlement does not name Mervin.

On or about the 30th April, 1830, Mr. Oliver (being at that time the owner of the rest of it) received a conveyance of ⅓th (two sixths) of the Santa Amelia plantation and appurtenances in the Island of Cuba, from Cornelius Souchay and the representatives of Antonio De Frias, deceased, (the said Cornelius and Antonio having been members of the aforesaid firm of De Frias and Company, of Havana,) in full settlement of a debt of $25,919, due to Mr. Oliver on the firm's two notes in his favor, amounting to that sum, with interest, and also in full of a claim on the same firm of $5,850 62½, of Lyde Goodwin's, the whole amounting at the time of settlement to the sum of $36,060 25, (thirty-six thousand and sixty dollars and twenty-five cents,) including the interest for demurrage.

These respondents are informed and believe that Mr. Oliver, in 1821, directed De Frias and Company to lay an attachment upon Goodwin's property for the advances which he had made to Goodwin in 1819 and 1820, but that they never informed him whether they had done so or not; and it was only after he had instituted suit against Souchay and the representatives of De Frias for the amount of the two notes above

mentioned of De Frias and Company, that they acknowledged their liability not only for the amount of those notes, but for the further amount of $5,850 62½, (five thousand eight hundred and fifty dollars sixty-two and a half cents,) and settled both claims by the aforesaid conveyance. These respondents, knowing of no property of Goodwin in Cuba but what he alleged to be in Mervin's care, and being informed that De Frias & Company had funds of Mervin in their hands and under their control, believe that the said item of $5,850 62½ is for the Mervin claim, but they repeat that, with the exception of Goodwin's assignment of 30th May, 1829, he made no assignment of his claim on Mervin to Mr. Oliver, so far as they know or are informed and believe, unless the draft for $2,000, already mentioned, may be deemed such to that extent. What the value of the one-third of the Santa Amelia plantation was at the time of its conveyance to Mr. Oliver by Souchay and De Frias' heirs, these respondents have no means of stating. In the year 1826 Mr. Oliver, when reluctantly authorizing his agent to take this interest if he could do no better, in satisfaction of his advances for De Frias & Company, amounting to $25,919 as already mentioned, stated his belief that the said third was not worth more than $20,000. On the 30th June, A. D. 1836, Mr. Oliver's representatives sold the whole plantation and appurtenances to George Knight for $108,000, of which upwards of $11,237 05 is still due; and on that day the whole cost of the plantation to him and his estate, after crediting all that had been received from it, was $171,479 80, which sum includes the $36,060 25 above mentioned.

They are informed and believe, that all the transactions which took place between said Oliver and said Goodwin prior to 1819 were settled before the commencement of that year, and that on the 13th July, 1819, said Oliver loaned said Goodwin $1,500, to be returned in 90 days with interest, and on the 9th August next following the further sum of $500; and that on the 31st October, 1820, he discounted for Goodwin said Goodwin's draft on Mervin, already mentioned, and paid him $1,200 on account thereof; and on the second November, 1820, the balance, after deducting $41 33 for the time said draft had to run; and that in 1825 the said Goodwin received from said Oliver the sums herein before particularly mentioned, on account of his share in the Mexican Company.

They are also informed and believe, and therefore charge, that the only assignment ever made by said Goodwin to said Oliver, of his claim on Mervin, was that made on the 30th May, 1829, already mentioned, which conveyed the same to him absolutely, unless the draft of $2,000 may be considered an assignment to that extent.

They have no knowledge of any assignment by said Goodwin of his commissions to said Oliver prior to that of 30th May, 1829; but they are informed and believe that said assignment was meant to convey, and does convey, said commissions, as well as the other things covered by it.

These respondents further say that said Oliver died in December, 1834; and that on the 27th and 28th March, 1837, John Nelson, esquire,

addressed to this respondent, Gibbes, the two letters of which copies are herewith filed, marked O G, No. 8; and that the same gentleman was examined on the 27th April, 1844, as a witness in the cause, in the Baltimore county court herein before mentioned, and made the deposition in regard to said letters, a copy of which is also set out in the last exhibit.

They are informed and believe, that the said Goodwin died on the second day of December, 1845, in the city of Baltimore, and that he resided in that city from the year 1816 until his death; and that on the 8th day of May, 1841, he made, before Henry S. Sanderson, notary public in the city aforesaid, the affidavit of which a copy is herewith filed, marked O G, No. 9; and that said affidavit was made by said Goodwin for the purpose of being used before the mixed commission aforesaid, and was known by him to have been used in support of the claim made by said Glenn and Perine before it, under the deed of 8th May, 1841; and that between the 10th June and 28th October, 1843, the said Goodwin was examined as a witness in the cause, in Baltimore county court herein before mentioned, and made the deposition of which a true copy is herewith filed, marked O G, No. 10.

They are further informed and believe, that notices to persons having claims against the Government of Mexico to present them to the mixed commission were published in one or more of the Baltimore daily papers, in the year 1841; and that in the same year last mentioned, as well as in the year 1843, public notice was given through the Baltimore papers, or some of them, by Baltimore county court, in the suit there pending for the distribution of the proceeds of the Mexican Company's claim on Mexico herein before mentioned, warning all persons interested in the premises to appear before said court and file their claims, as will appear by copies of said notices, and the certificates of publication thereof herewith filed, marked O G, No. 11. And these respondents are also informed and believe, and therefore charge, that the said Lyde Goodwin never made any claim whatever before the mixed *convention* aforesaid, or in the cause herein before mentioned as instituted in Baltimore county court for the distribution of the funds arising from the Mexican Company's claim on Mexico.

They admit that they are the surviving executors of said Oliver, and that the complainant is the administrator of said Goodwin.

They are informed and believe, that said Goodwin, on or about the 25th February, 1817, applied for the benefit of the insolvent laws of Maryland, and on the day following executed to George J. Brown, his provisional trustee, duly appointed and qualified, a deed of assignment of all his property and claims, real, personal and mixed; and that the said George J. Brown, on the 21st March, 1825, executed to said Oliver an assignment of said Goodwin's ninth part or share of the Mexican Company's claim on Mexico, a copy of which is herewith filed, marked O G, No. 12; and that said Goodwin afterwards, to wit, on the twenty-eighth day of April, 1834, applied a second time for the benefit of the same laws; and they believe, and therefore charge, that in the schedule

annexed to his said second application no mention whatever is made of any interest held or claimed by him either in the Mexican Company or in his commissions; and that the permanent trustee, duly appointed and qualified, upon such his second application, was Thomas P. Alricks, of the city of Baltimore; and that the said Alricks was represented by John Nelson, esquire, in the application which he made to the respondent, Gibbes, on the 27th March, 1837, herein before mentioned; and that the said Alricks was privy to the existence of the case in Baltimore county court herein before mentioned, and a party thereto; and that, in his capacity of permanent trustee of Lyde Goodwin, on his said second application, he filed a petition claiming, not said Goodwin's share in the Mexican Company, but his commissions, as will appear by a copy thereof herewith filed, marked O G, No. 13; and that the decision of said county court was against the claim of said Alricks, as set up in said petition; and that said Alricks entered an appeal from said decision, as appears by a copy of the order of the solicitor to that effect herewith filed, marked O G, No. 14; and that the decision of the court of appeals in favor of the executors of said Oliver, as herein before mentioned, was pronounced with the claim before it of the said Alricks, as permanent trustee of the said Goodwin, on his application in 1834.

These respondents are also informed and believe, that the said Lyde Goodwin made a third application for the benefit of the insolvent laws on the 2d July, 1841, and that the said Alricks was appointed his provisional trustee, and that in schedule of said Goodwin on his third application no mention whatever is made of any interest belonging to him either in the Mexican Company or in his commissions.

These respondents are also informed and believe, that $2,000 was the full market value of said Goodwin's one-ninth share in the Mexican Company in the spring of 1825, and that said Oliver about that time bought two other shares at the same rate, and that afterwards they declined in value, so that no person would buy them at any price. And these respondents are informed and believe, that at the time of the execution of the assignment of the 30th May, 1829, the said shares were of no value in the market, and the said Goodwin unable to pay his debts; and they are satisfied and aver it to be their belief, that without the active exertions of said Oliver and his influence and readiness to make the heavy expenditures necessary for its prosecution, the Mexican Company claims never would have been recovered from the Mexican government; and that the value which that claim acquired subsequently to his interest in it was mainly owing to him.

These respondents further aver, that on the 6th November, 1850, a bill was filed in this honorable court by a certain John Deacon against these respondents, claiming from them the whole fund received by them on account of said Goodwin's share and commissions. And that said bill, though dismissed by this court, hath been carried by the complainant therein to the Supreme Court of the United States by appeal, and is now there pending and undecided.

These respondents further aver, that the net proceeds of the commission due said Goodwin on account of Thomas Sheppard's share in

the Mexican Company is included in the amount herein before set forth, as paid by Glenn and Perine to these respondents, and that the whole of the money paid to them, as herein before set forth, by said Glenn and Perine, was received by them, the said Glenn and Perine, under the deed and award aforesaid, more than three years prior to the filing of this bill.

These respondents plead the statute of limitations in bar to the bill of the complainant and to the claims therein mentioned, and further rely upon, and plead in bar, that his remedy, if any, (which is denied,) is at law, and also plead in bar the illegality of the original transaction out of which the claims sued for arises, and pray to have the same benefit of these defences as if they were formally and technically pleaded.

And these respondents further say, that on the 11th of April, 1850, there was paid to these respondents in stock and money (in addition to what is herein before set forth) a further sum of $888 12, which was retained on account of the supposed interest of George P. Stevenson in the fund, but which in January, 1852, was considered to be and treated as belonging to Goodwin's share, and that on the 5th September, 1851, they received from the United States $118 81 on account of said share, and $3,084 12 on account of said Goodwin's commissions.

And these respondents further say, that letters testamentary on the estate of said Oliver were granted them and their deceased co-executor on the 10th June, 1835, and that public notice was given by them in that year, in conformity with the testamentary laws of Maryland, to all persons having claims against said deceased to exhibit the same to them, with the vouchers therefor, on or before the 16th March, 1836, and that the said Lyde Goodwin, and the said complainant as his administrator, have not exhibited any claim to them within the time so limited by law; and they rely upon and plead these facts in bar to the claim of the complainant.

R. M. GIBBES, *for himself and*
CHARLES OLIVER,
Surviving executors of Robert Oliver, deceased.
REVERDY JOHNSON,
J. M. CAMPBELL,
Solicitors for respondents.

SOUTHERN DISTRICT OF NEW YORK, *sc:*
State of New York, city of New York, sc.

Be it remembered, and it is hereby certified, that on this third day of December, A. D. 1852, before me the subscriber, a commissioner appointed by the circuit court of the United States, in and for the second circuit and southern district of New York, to take affidavits, &c., personally appeared Robert M. Gibbes, esq., and made oath on the Holy Evangely of Almighty God that the matters and things stated in the foregoing answer are true, to the best of his knowledge and belief.

In witness of which I have hereto set my hand and seal at said city, [Seal's place.] on the day and year above written.

G. W. MORTON, *U. S. com'r.*

UNITED STATES OF AMERICA,
Southern district of New York, to wit.

I, John W. Nelson, clerk of the circuit court of the United States, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the foregoing jurat, and that the signature of the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same a United States commissioner, duly appointed under and by virtue of the acts of Congress in such case made and provided, by the circuit court of the United States for the southern district of New York.

In witness whereof I hereto subscribed my name and affixed the seal of the said circuit court, this third day of December, [Seal's place.] anno Domini 1852, and of the independence of the United States the seventy-seventh.

JOHN W. NELSON, *Clerk.*

Exhibit O G, No. 1, referred to in the foregoing answer.

BALTIMORE, *March 21st*, 1825.

TO ROBERT OLIVER, esq., *Baltimore.*

SIR: It having been agreed by the original proprietors of the shares of the Baltimore Mexican Company, that Lyde Goodwin, the agent of said company, should receive a commission of 5 per cent. for his services on the amount recovered by said company, you are hereby authorized to pay over to his order 5 per cent. on the amount so received.

ROBERT HOLLINS,
Trustee of Hollins & McBlair.
H. SCHWARTZE,
Assignee of P. A. Guestier, assignee of Descaves & Mercier.
BENJAMIN C. HOWARD,
One of the trustees of Hollins & McBlair.
JOHN SULLIVAN,
Surviving partner of Jeremiah and John Sullivan.
GEORGE WINCHESTER,
Trustee of Gooding & Williams.
CHARLES F. MAYER,
Trustee of Hollins & McBlair.
DAVID HOFFMAN,
Trustee of Hollins & McBlair.
J. GLENN, *Assignee of T. Sheppard.*
EDW'D MORGAN,
Assignee of T. Sheppard.

Exhibit O G, No. 2, referred to in the foregoing answer.

DEAR SIR:

Being interrupted on the day I had the pleasure of conversing with you relative to the Mina claim, I was prevented from explaining fully my wishes. The claim having been recognised by the Government of Mexico, the only obstacle to its final and speedy adjustment has been the want of a minister from this country. I have information from high authority that Mr. Poinsett will be (if not already) nominated for that station by Mr. Munroe. This gentleman is intimately acquainted with the nature of our claim, and, in an interview I had with him last winter, told me that nothing was wanting but the presence of an *M.* S. minister to insure its speedy liquidation. The amount of my original proportion of the claim, exclusive of interest, is twenty thousand dollars. The agents for the company are George Winchester and myself, through whose hands alone the amount recovered must pass. General Wilkinson has hitherto been charged with the prosecution of our claim, but the company have only been waiting for the appointment of a minister to transfer the powers of attorney to Mr. John Mason, the secretary of legation. My object in proposing to assign to you my interest therein is first to secure to you the sum I already owe you, and, secondly, to obtain barely the means of support for the present. I am at this time absolutely destitute of many indispensable articles of family requirements, and owe a few hundred dollars, the demands for which are so pressing on me as to make my office hateful, and life itself almost a burden to me. If you think there is a reasonable prospect of recovering the money, I do hope and believe you will accede to my proposition. The additional sum that I would require shall not exceed two thousand dollars, ($2,000). I feel confident that the business is now in such a train that under the auspices of our minister to that country it will be finally adjusted before the close of this year.

I am, dear sir, most respectfully,

Your obedient servant,

LYDE GOODWIN.

ROBERT OLIVER, esq.

Baltimore, January 11th, 1825.

Exhibit O G, No. 3, referred to in foregoing answer.

Received, Baltimore, February 15th, 1825, of Robert Oliver, five hundred dollars, on account of a share of the Mexican Company's claim on the Mexican Government for supplies furnished to General Mina in 1816, which share is transferred to him.

(Signed) LYDE GOODWIN.

BALTIMORE, *March* 24, 1825.

Received of Robert Oliver, esq., five hundred dollars, on account of my interest in the Mexican Company's claim on Mexico.

(Signed) LYDE GOODWIN.

Exhibit O G, No. 4, referred to in foregoing answer.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

Know all men by these presents, that we, the undersigned, have made, ordained, authorized, constituted, and appointed, and by these presents do make, ordain, authorize, constitute, and appoint Robert Oliver, esquire, of the city of Baltimore, merchant, our true and lawful attorney, for us, and in our names or otherwise, to claim, solicit payment of and from the Government of Mexico, or of and from any council, minister, tribunal, or other authorities, or officer, or officers of that government, and of and from all other persons whom it doth, or shall, or may concern, all and every sum and sums of money, or other equivalent therefor, which now is, or are, or hereafter may be awarded to a company of merchants known by the name of the Mexican company of Baltimore, for or on account of certain supplies of money and goods, effects, and merchandise, furnished by said Mexican Company of Baltimore to General Xavier Mina, commander of an expedition which sailed from the port of Baltimore in the year one thousand eight hundred and sixteen for Mexico, to aid in the emancipation of that country from the Government of Spain; and the better to enable our said attorney the more effectually to execute the above purposes, we, the said undersigned, hereby authorize and empower our said attorney to make and present to said Government of Mexico, councils, ministers, tribunals, or other authorities, or officer or officers of said government, any memorial or memorials, petition or petitions, remonstrance or remonstrances, relative to said claim as he may think proper, and, in case of need, to use and take all lawful ways and means to recover and receive the sum or sums of money herein before mentioned, and for what may be received, in due form of law to execute and deliver requisite and sufficient receipts, releases, and acquittances, and to compound, compromise, conclude, and agree for the same by arbitration or otherwise, as our said attorney shall think fit and most beneficial; with power, also, an attorney or attorneys under him for the purpose aforesaid to make and substitute, and again at pleasure to revoke, and generally in and about the premises to do, execute, and perform all and whatever the said constituents might or could do by being personally present, as fully and effectually to all intents and purposes, hereby ratifying and confirming all and whatsoever our said attorney, or his substitute or substitutes, shall or may lawfully do, or cause to be done, by virtue thereof.

And we, the said undersigned, do by these presents hereby revoke, annul, and countermand, and to all intents and purposes make, annul, void, and of none effect, a letter of attorney heretofore granted to Dennis A. Smith and General James Wilkinson, and all powers and authorities therein and thereby made, granted, and given to said Dennis A. Smith and General James Wilkinson in and about our said claim upon the Government of Mexico aforesaid.

In witness whereof we have hereunto set our hands and seals the twenty-second day of March, in the year of our Lord one thousand eight hundred and twenty-five.

JOHN SULLIVAN, [SEAL.]
Surviving partner of the firm of Jere. and John Sullivan.
GEORGE WINCHESTER, [SEAL.]
Assignee of James Williams.
GEORGE WINCHESTER, [SEAL.]
Trustee of J. Gooding.
CHARLES F. MAYER, [SEAL.]
One of the trustees of John Hollins, Michael McBlair, and John Smith Hollins, for self and his co-trustees, David Hoffman, Benjamin C. Howard, and Robert S. Hollins.
DAVID HOFFMAN, [SEAL.]
One of the trustees of Hollins & McBlair aforesaid.
JOHN GLENN, [SEAL.]
One of the assignees of Thomas Sheppard.
EDWARD MORGAN, [SEAL.]
One of the assignees of Thomas Sheppard.
ROBERT S. HOLLINS, [SEAL.]
One of the trustees of Hollins & McBlair.
H. SCHWARTZE, [SEAL.]
Assignee of P. A Guestier, assignee of Descaves & Mercier.
LYDE GOODWIN. [SEAL.]
BENJAMIN C. HOWARD. [SEAL.]
One of the trustees of Hollins & McBlair.

Signed, sealed, and delivered in the presence of—
JOHN GILL, *Notary Public,*
R. H. LOWRY.

UNITED STATES OF AMERICA,
State of Maryland, to wit:

Be it known, that on the twenty-second day of March, one thousand eight hundred and twenty-five, before me, John Gill, notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State of Maryland aforesaid, personally appeared John Sullivan, surviving partner of the firm of Jere. & John Sullivan, to me, notary, known as such; George Winchester, assignee of James Williams, to me, notary, known as such; George Winchester, trustee of John Gooding, to me, notary, known as such; Charles F. Mayer, one of the trustees of John Hollins, Michael McBlair, and John Smith Hollins, to me, notary, known as such; David Hoffman, one of the trustees of Hollins and McBlair, to me, notary, known as such; John Glenn, one of the assignees of Thomas Sheppard, to me, notary,

known as such; Edward Morgan, one of the assignees of Thomas Sheppard, to me, notary, known as such; Robert S. Hollins, one of the trustees of Hollins and McBlair, to me, notary, known as such; H. Schwartze, assignee of P. A. Guestier, assignee of Descaves and Mercier, to me, notary, known as such; Lyde Goodwin and Benjamin C. Howard, one of the trustees of Hollins and McBlair, to me, notary, known as such; and severally acknowledged the preceding letter of attorney to be their act and deed, for the uses and purposes therein mentioned.

In testimony whereof I hereunto set my hand, and affixed my seal notarial, the day and year first above written.

(Signed) JNO. GILL, *Notary Public.*

Exhibit O G, No. 4½, *referred to in foregoing answer.*

(Copy.)

Being indebted to Robert Oliver, of Baltimore, upwards of nine thousand dollars, I hereby assign, transfer, and make over to the said Robert Oliver, in payment of my said debt to him, the following objects, which were assigned to him many years ago, to secure the payment of said debt due by me, to wit:

All my undivided ninth part and right, title, and interest, of every kind whatever, in the claim of the Government of Mexico for supplies furnished and advances made the late General Mina, or the proceeds thereof, and which claims are under the control of the said Robert Oliver, and his agent, John Mason, jr., now in Mexico; also a claim on a certain Louis Mervin, who died some years ago in Havana. The object and intention of this agreement is to make a full and complete transfer to the said Robert Oliver of all my right, title, and interest, as aforesaid; for which the said Robert Oliver has agreed to balance my account on his books, and to consider the same as satisfactorily settled. And I hereby authorize and order all my agents, or those holding any powers of attorney or instructions from me relative to the aforesaid property, to account with the said Robert Oliver for the same, or the proceeds thereof.

Baltimore, May 30, 1829. L. GOODWIN.

Witness—JOHN THOMAS.

I confirm the above agreement.

ROBERT OLIVER.

Exhibit O G, No. 5, *referred to in foregoing answer.*

Whereas certain claims have been preferred before the Board of Commissioners, under the convention of the eleventh day of April, eighteen hundred and thirty-nine, between the United States of America and the Mexican republic, on behalf of the Mexican Company of Baltimore, of which company the undersigned are members, or the assignees of members thereof; and whereas Dennis A. Smith had also a certain claim or claims against said Mexican republic, of which some of the undersigned are also assignees; and whereas it is desirable

that the whole of said claims be vested in trustees, in order to receive and obtain such claims, and to distribute the same among the parties interested, according to their respective rights and interests; and whereas John White, Philip E. Thomas, and the executors of Robert Oliver, deceased, are the assignees of the entire interest of said Dennis A. Smith in and to said claims, and David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, are assignees of the interest of Hollins and McBlair in said claims; and whereas the executors of Robert Oliver are the assignees of the several interests of John Gooding, James Williams, and Lyde Goodwin; and whereas John Glenn and Edward Morgan are the assignees of the interest of Thomas Sheppard in and to said claims; and whereas John Sullivan is the surviving partner of Jeremiah Sullivan, and as such entitled to the interest of said Jeremiah Sullivan; and whereas Henry Schwartze is the assignee of Peter A. Guestier, who was the assignee of the interests of Descaves and Mercier in said claims:

Now know all men by these presents that we, the said John White, Philip E. Thomas, and the executors of Robert Oliver, by David M. Perine their attorney, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, John Sullivan and Henry Schwartze, have granted, bargained, and sold, and do hereby grant, bargain, and sell, unto John Glenn and David M. Perine, above named, their executors, administrators, and assigns, all the right, title, and interest in and to all and every part of the claims aforesaid, under said convention as aforesaid: To have and to hold the same to the said John Glenn and David M. Perine, and the survivor of them, and the executors, administrators, and assigns of such survivor; in trust to receive said claims, and all and every of the proceeds thereof, and the same, when received, to deposit in the Mechanics' Bank of Baltimore, and there to remain until the same be divided and distributed according to the rights of the parties respectively claiming or to claim any part of the same.

In witness whereof we hereunto set our hands and seals this eighth day of May, in the year of our Lord one thousand eight hundred and forty-one.

R. M. GIBBES, [SEAL.]
CHARLES OLIVER, [SEAL.]
THOMAS OLIVER, [SEAL.]
Ex'rs of Robert Oliver, by D. M. Perine, their att'y.
EDWARD MORGAN, [SEAL.]
J. GLENN, [SEAL.]
Assignees of Thomas Sheppard.
DAVID HOFFMAN, [SEAL.]
BENJAMIN C. HOWARD, [SEAL.]
CHARLES F. MAYER, [SEAL.]
ROBERT S. HOLLINS, [SEAL.]
JOHN SULLIVAN, [SEAL.]
H. SCHWARTZE, [SEAL.]

Signed, sealed, and delivered in the presence of—
WILLIAM EICHELBERGER, of J.,
JAMES S. WHITE.

UNITED STATES OF AMERICA,
State of Maryland, city of Baltimore, ss.

I, William Eichelberger, of J., notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State of Maryland, do hereby certify, attest, and make known, that David M. Perine, attorney for the executors of Robert Oliver, deceased, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, and Robert S. Hollins, John Sullivan and Henry Schwartze, all of the said city of Baltimore, personally appeared before me, and signed and sealed the foregoing deed of trust or instrument of writing, and severally acknowledged the same to be their respective act and deed. And the said David M. Perine also acknowledged the said deed of trust or instrument of writing to be the act and deed of Robert M. Gibbes, Thomas Oliver, and Charles Oliver, the executors of the said Robert Oliver, deceased.

And I do hereby further certify, attest, and make known, that of my own knowledge I am satisfied that David M. Perine, Edward Morgan, John Glenn, David Hoffman, Benjamin C. Howard, Charles F. Mayer, Robert S. Hollins, John Sullivan, and Henry Schwartze, who have executed and acknowledged the foregoing deed of trust or instrument of writing, are the persons named and described as, and professing to be, parties therein.

In testimony whereof I, the said notary, have hereunto set my hand, and affixed my notarial seal, the eighth day of May, eighteen hundred and forty-one, and of the independence of the United States the sixty-fifth.

(Signed.) WILLIAM EICHELBERGER, of J.,
Notary Public.

Exhibit O G, No. 6, *referred to in foregoing answer.*

Board of Commissioners for adjusting claims of American citizens on Mexico, under the convention between that government and the United States, concluded on the 11th day of April, 1839.

Sitting of Wednesday, June 9, 1841.

In the cases of Oliver and of Smith, the board unanimously adopted the decree which is in the words following, to wit:

Oliver's case.

Under the denomination of Oliver's case were comprehended two distinct claims, i. e.:

1st, The claim of Dennis A. Smith, amounting to $\$84{,}230\frac{73}{100}$; and 2d, the claim of the Mexican Company of Baltimore, amounting to $\$160{,}563\frac{73}{100}$, both sums being for arms, vessels, munitions of war,

goods, and money furnished by the said Smith and the said company, respectively, to General Mina, for the service of Mexico, in the years 1816 and 1817; and the Mexican and American commissioners, in deliberating upon the first of the above-named claims, to wit, that of Dennis A. Smith, having disagreed as to the time from which interest, at the rate of six per cent., thereon should commence to run, and as to the correctness of an item of $10,000, part of the aforesaid sum of $84,230$\frac{77}{100}$, the said claim, with that exception, having been unanimously agreed to be correct, they referred the aforesaid points in dispute to the umpire, who, on the 3d instant, transmitted his decision to the board, upon the disputed points so referred to him as aforesaid, wherein and whereby he decides that the government of the Republic of Mexico is held to pay an interest upon the aforesaid sum of $84,230$\frac{77}{100}$, after deducting therefrom the sum of $625, being the excess of charge in the disputed item of $10,000 for loss upon 2,500 muskets. Now, in order to carry out the principles established by the decision of the umpire in this case, and at the same time evince our respectful acquiesence in that decision, we do hereby unanimously decree and decide that the Government of Mexico shall pay to Philip E. Thomas and John White, trustees, (to whom the same has been assigned and transferred by Dennis A. Smith,) in trust, for whom it shall concern, according to the rates of their respective interests, the sum of one hundred and forty-one thousand seven hundred and fifty-four dollars and sixty-nine cents, being the one-half of the said Smith's claim, allowed as aforesaid by the umpire, with interest thereon at the rate of six per cent. per annum from the 15th day of April, 1817, and one-ninth of the amount of the shares claimed by the Mexican Company of Baltimore, being one of the said Smith's two shares in the stock of the said company, with interest upon the said one-ninth at the rate of five per centum per annum, from the 15th day of April, 1817, that being the rate of interest and the date from which it shall, according to the decisions of the umpire, be computed upon the claim of the said company against Mexico.

And we do, also, under the same spirit and from the same motives, unanimously decide and decree that the Government of Mexico shall, according to the decisions of the umpire upon the second claim, to wit, that of the Mexican Company of Baltimore, pay to David M. Perine and John Glenn, trustees for Robert Oliver's legal representatives, and whomsoever else it may concern, in the ratio of their respective interests, the sum of four hundred and seventeen thousand four hundred and twenty-seven dollars and forty-seven cents, being the remaining half of the said Dennis A. Smith's individual claim, as allowed by the umpire, with interest thereon from the date and at the rate allowed by the umpire, and the remaining eight shares of the said Mexican Company of Baltimore, with interest thereon on at the rate of five per centum per annum, from the 15th day of April, 1817, up till the date of this award, the said Smith and the other stockholders of the said company having assigned and transferred to the said D. M. Perine and J. Glenn, in trust for those interested, their respective interests, the said Smith the

remaining half of his individual claim, and he and the other members of the said company, the remaining eight shares of the stock of that company, which eight shares of the said company's stock, and the remaining half of the said Smith's individual claim, with interest thereon, as above stated, constitute the sum above and hereby decreed to the last above-mentioned trustees.

Given under our hands and seals, at our session room, at the city of Washington, this 9th day of June, 1841.

(Signed)

W. L. MARCY, [SEAL.]
JOHN ROWAN, [SEAL.]
PEDRO F. DEL CASTELLE, [SEAL.]
JOAQUIM VELASQUES DE LEON. [SEAL.]

Exhibit O G, No. 7, referred to in foregoing answer.

Court of Appeals, June term, 1849.

CHARLES OLIVER, Robert M. Gibbes, and Thomas Oliver, executors of Robert Oliver, and John Glenn, and David M. Perine, trustees, &c.,
vs.
GEORGE M. GILL, permanent trustee of Lyde Goodwin, and others.

Appeal in the case of Thomas & White *vs.* D. Smith and others.

The appeal in this case coming on for hearing, and having been fully argued by the solicitors of the respective parties, has been since fully considered by the court, and it appearing to the court that that part of the decree appealed from the court below, which directed any portion of the fund in controversy to be transferred or paid to the appellee, G. M. Gill, as permanent trustee of Lyde Goodwin, was erroneous and should be reversed; and it also appearing to the court that said portion of said fund should be paid over and transferred to the appellants, Charles Oliver, Robert M. Gibbes, and Thomas Oliver, as executors of Robert Oliver, in the proceedings mentioned, together with all accumulations of interest or dividends since accruing upon the same:

It is, thereupon, by this court and the authority thereof, on this 23d day of June, in the year one thousand eight hundred and forty-nine, adjudged, ordered, and decreed that the said decree of the court below, so far as the same adjudged and decreed any portion of the fund in controversy to be transferred or paid to the said George M. Gill, as permanent trustee of Lyde Goodwin, be, and the same is reversed and annulled. And this court, proceeding to pass such decree in the premises as they are of opinion should have been passed by the court below, do further adjudge and decree that all and every part of such portion of said fund so by the court below decreed to be transferred or paid to said George M. Gill, as trustee aforesaid, be by the trustees in the proceedings mentioned, David M. Perine and John Glenn, transferred or paid over to the appellants, Charles Oliver, Robert M. Gibbes, and

Thomas Oliver, as executors of Robert Oliver, together with all and every accumulations of interest, or dividends, or investments of the same made or accruing in and upon such part or portion of said fund. And it is further, by this court and its authority, adjudged and decreed that all other portions of the decree of the court below, except such as is hereby reversed, be, and the same is hereby, affirmed. It is further adjudged and decreed that the reversal of the decree of the court below be without costs.

THOMAS B. DORSEY,
ARA SPENCE.

OLIVER'S EXECUTORS and others
vs.
GEORGE M. GILL, permanent trustee of Lyde Goodwin and als.

The majority of this court who sat in the trial of this cause, (and by which was decreed the reversal of the decree of the county court,) at the instance of the solicitors of the appellees briefly state the following as their reasons for such reversal. They are of the opinion that the entire contract upon which the claim of the appellees is founded is so fraught with illegality and turpitude as to be utterly null and void, and conferring no rights or obligations upon any of the contracting parties, which can be sustained or countenanced by any court of law or equity in this State or of the United States; that it has no legal or moral obligation to support it, and that therefore, under the insolvent laws of Maryland, such a claim does not pass to or vest in the trustee of an insolvent petitioner. It forms no part of his property or estate within the meaning of the legislative enactments constituting our insolvent system. It bears no analogy to the cases decided in Maryland and elsewhere, of claims not recoverable in a court of justice, which, nevertheless, have been held to vest in the trustees of an insolvent or the assignee of a bankrupt. In the case referred to, the claims as concerned those asserting them were on their part tainted by no principle of illegality or immorality; on the contrary, were sustained by every principle of national law and natural justice, and nothing was wanting to render them recuperable but a judicial tribunal competent to take cognizance thereof. Wholly dissimilar is the claim before us; such is its character that it cannot be presented to a court of justice but by a disclosure of its impurities, and if anything is conclusively settled or ought to be so regarded, it is that a claim thus imbued with illegality and corruption will never be sanctioned or enforced by a court either of law or equity.

Entertaining this view of the case, it is unnecessary to examine the various minor points which were raised in the argument before us.

Exhibit O G, No. 8, referred to in the foregoing answer.

MY DEAR SIR: I called this morning (but was not fortunate enough to find you in your office) for the purpose of expressing to you my ac-

knowledgments for having shown to Mr. Goodwin the assignment, and of saying that I am quite satisfied, from his representation of its contents, that there is no foundation for a claim against Mr. Oliver's estate.

Respectfully, &c.,
JOHN NELSON.

R. M. GIBBES, Esq.
March 28th, 1837.

BALTIMORE, *March 27th*, 1837.

R. M. GIBBES, Esq.,
Executor R. Oliver.

SIR: I have been applied to by Mr. Goodwin and his trustee, to investigate a claim that they suppose to exist against the estate of the late Robert Oliver, and which upon the face of the papers seems to be well founded. I understand that Mr. Oliver's representatives set up in defence an assignment which it is alleged extinguishes the claim.

Of the execution of this assignment Mr. Goodwin has no recollection, and it is surely but reasonable that he should be satisfied of its existence and extent. Under this impression, and with a view to avoid inconvenience to all parties, I applied some weeks since to Mr. Meredith, asking that I might see the assignment, and assuring him that if it professed to transfer the claim against Frias & Co., or Mervin, as well as against Mexico, the claim on our part would be relinquished. Mr. Meredith declined to gratify my request. As a resort to legal and equitable process must necessarily expose all parties to costs, and as there can be no good reason that I can imagine why the examination of a paper should be refused, of which it is in the power of the claimant to enforce the production, I ask leave again respectfully to invite your attention to this subject, and to say, that I have a decided repugnance to the institution of unnecessary suits, and that if the paper upon which you rely be shown to me and proves to be such as you suppose, all further proceedings will be abandoned. If it be withheld, the only alternative left with Mr. Goodwin's trustee will be to coerce its exhibition, when it is due to frankness to apprize you I shall make such use of your refusal to produce it as I may under the circumstances consider to be proper.

I am, very respectfully, sir, your obedient servant,
JOHN NELSON.

John Nelson, esq., produced, sworn and examined on behalf of the said George M. Gill, permanent trustee of Lyde Goodwin, deposes as follows:

Some years ago, and since the death of Robert Oliver, and in the winter or spring of 1837, Mr. Lemuel Taylor, of the island of Cuba, placed in deponent's hands a number of papers in reference to his relation with said Oliver's estate, and amongst those papers was a deed which contained a recital of the satisfaction of a claim by the house of De Frias and company of Havana, or Matanzas, to said Oliver due

from said firm to Lyde Goodwin. Mr. Lyde Goodwin's attention was called to this fact, and said Goodwin then represented to deponent that he had transferred to Mr. Oliver a claim upon the Government of Mexico, for the satisfaction of the same account in discharge of which the debt from De Frias and company had been assigned as security, and said Goodwin insisted that he was entitled to a re-assignment of the Mexican claim, or an account for the claim received from De Frias and company, and he asked deponent to call on the executors of said Oliver and examine the assignment and ascertain the state of the account; deponent accordingly called on Mr. Gibbes, one of the executors of said Oliver, who declined to show deponent the papers, but assured deponent that there were absolute assignments by said Goodwin to Mr. Oliver of both claims. Deponent called on Mr. Gibbes several times on the subject, and on every occasion he declined to show deponent the papers.

Deponent told said Gibbes that all he desired was to see the papers and ascertain the nature of the assignment, and that if he persisted in refusing to show them, he (deponent) would be under the necessity of filing a bill in chancery to compel their production. They never were shown to deponent, to the best of his recollection, but they were shown to Mr. Goodwin, as said Goodwin represented to deponent, and from the statements of Mr. Goodwin in regard to the character of said assignments, deponent wrote to said Gibbes a note which is now shown him and marked R O, No. 4.

Deponent further states, that in the progress of this transaction he had conversation with Mr. Thomas P. Alricks, who was trustee of Lyde Goodwin under his then recent application for the benefit of the insolvent laws, whose name, if legal proceedings had been instituted to compel the production of said papers, it would have been necessary to use, as the recovery in the case would have been for the benefit of Goodwin's creditors. Deponent was not aware at the time, to the best of his recollection, that Mr. Goodwin had, upon any former occasion, *had* been an applicant for the benefit of the insolvent laws, nor does he recollect to have had at the time any conversation with any other person professing to be said Goodwin's trustee, on the subject of said claim or business, except said Alricks, to whom in his letter of the 27th of March, 1837, addressed to Mr. Gibbes, and marked R O, No. 5, deponent referred.

Exhibit O G, No. 9, referred to in the foregoing answer.

THE UNITED STATES OF AMERICA,
State of Maryland, to wit.

I, Henry S. Sanderson, notary public by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, do hereby certify, attest and make known, that on this eighth day of May, in the year eighteen hundred and forty-one, personally appeared Lyde Good-

win, of the city of Baltimore, and made oath on the Holy Evangely of Almighty God, that at the time *of* the expedition under General Mina was projected in the city of Baltimore for the aid of the Republic of Mexico, he, the deponent, was one of the original parties of the Mexican Company of Baltimore, which company was formed for the purpose of assisting General Mina as aforesaid, which expedition was fitted out under the immediate superintendence and direction of the deponent; that afterwards and many years before the decease of Robert Oliver, who died in December, eighteen hundred and thirty-four, the deponent assigned and made over to the said Robert Oliver all his right, title and interest of every kind whatsoever in the said claim on the Government of Mexico for supplies furnished, and advances made to the said Gen'l Mina, or the proceeds thereof; the deponent being therefore well acquainted with the circumstances under which the supplies were furnished Gen'l Mina as aforesaid, and having many years since parted with his interest in said claim as above stated, deposes and says: That under the circumstances at the time the expedition under Gen'l Mina was projected in the city of Baltimore, the one hundred per cent. charged was considered by the owners of it, and by this community, as far below a reasonable compensation; besides the risk of failure, (which actually happened by the capture and death of Gen'l Mina,) the expedition had to encounter the risk of capture at sea by the Spanish squadron, which was respectable in number and efficiency, and which rendezvoused at Havana, and directly in the path of the vessels on their way, as deponent thinks, to Matamoras or its neighborhood; so great was considered the risk at sea that no insurance at any rate of premium could have been effected on it in this country.

There was likewise another very great risk to be encountered, namely, the uncertainty of the success of the patriots of Mexico in the vital struggle for liberty in which they were engaged. Indeed at the present time of caution and prudence, the deponent looks back to the period of the undertaking with astonishment, and can only account for the zeal and energy with which it was prosecuted, surrounded as it was by so many perils, by the respect and sympathy felt for the gallant chief, and the desire to promote the cause of human rights and civil liberty for which the Mexicans were contending; so far, deponent repeats, was the 100 per cent. from being a renumeration even if the expedition had been eminently and immediately successful, that it was thought by all who had any knowledge of it as altogether inadequate to the danger incurred for the loss of credit which it certainly produced in the more discreet portion of our business men, and the length of time which must necessarily have elapsed before the parties could expect to be paid; General Mina and Doctor Mier both thought it moderate, and did not for one moment hesitate to accede to it.

It is a custom so universally known and so unhesitatingly admitted and acted on in all commercial transactions, that the profit is to be in proportion to the risk, that deponent does not considered it to say anything upon the subject. A reference to several mercantile houses of

this city will show that similar expeditions to Buenos Ayres and Chili, *above* the same time, were made on terms certainly not more, if as advantageous to the patriots of those countries. And in the particular case to which deponent has now had his attention called, he thinks he has furnished enough to satisfy any disinterested mind of the justice of the demand now made for the fulfilment of the contract referred to. And the said Lyde Goodwin further deposes and says, that the invoices and accounts of the expedition under General Mina were signed by the general, and delivered to Captain Boyle, commander of the brig Calypso, and were copied into the ledger kept by Mr. George Monck, deponent's clerk, under deponent's direction; at the close of these copies were placed "signed Xavier Mina." After this was done, it was on better reflection thought advisable to make these copies duplicates, instead of copies, and the words signed "Xavier Mina" were scratched out, and General Mina signed such accounts in the ledger with his own proper handwriting, in the presence of deponent. The reason of this change was the fear that the original given to Captain Boyle, signed by General Mina, might be lost, and the event showed propriety of this precaution, because, with every exertion which it has been possible to use, the papers furnished Captain Boyle have never been found.

L. GOODWIN.

Of which an act having been of me requested, I have granted these presents, to serve and avail as need and occasion may require.

In testimony whereof, the said deponent hath hereunto subscribed his name and affixed his notarial seal, the eighth day of May, in the year of our Lord one thousand eight hundred and forty-one.

(Signed) H. S. SANDERSON,
Notary Public.

Exhibit O G, No. 10, *referred to in foregoing answer.*

Lyde Goodwin being duly sworn and examined by Mr. Dulany in the matter of the claim of McCulloh, trustee of Stevenson and Alricks, administrator of Forbes, deposes and says:

That he was the agent of the company and the ship's husband; that the ledger filed in this cause is the original and only book of the company, and was at all times open to the examination of all the parties interested. The book was kept under deponent's direction by George Monk, the clerk of deponent and the company; said Monk is dead. The said book is in the handwriting of said Monk with some exceptions; said book was before the commissioners at Washington, and has previously been in Mexico; and this was the book on which the claim of the Mexican Company was founded and allowed by the commissioners. Mr. George P. Stevenson was one of the original members of the Mexican Company; said Stevenson, while the expedition was preparing, failed in business, and was unable to pay his quota, and at the time of his failure all that said Stevenson had not paid or become responsible

for, the other members of the company, with the exception of Descaves and Mercier, took the remaining interest of Stevenson and paid or assumed the balance with the knowledge and consent of said Stevenson, and at his solicitation. There was no understanding or agreement between said Stevenson and the other members that they were to have what he had already paid. With regard to Forbes, he says that the agreement with Forbes is expressed on page 42 of the ledger, and said agreement and understanding was known to the said company, and each member gave his note for his proportion of the one-half, as appears on page 42.

Being shown the paper marked J. G. H., hereto annexed, he states that the same is in his handwriting, but he has no recollection of said paper, and he presumes he must have been authorized by Mr. Stevenson to make that agreement, as no else was authorized to do so, but that the whole matter has escaped his recollection; he also says that the first item in the invoice on page 12 of ledger, $22,032 50, is for the supplies furnished by Forbes, one-half of which belonged to him, and the other half to the company.

Cross examined by Mr. Glenn.

He has the papers of the company, or some of them, and will produce them; said Stevenson never paid any part of his interest that deponent knows of. When deponent sold to Oliver, he represented to him that he had interest of one-ninth.

Examined by Mr. Dulany.

He does not know whether said Stevenson paid any thing or not; the probabilities are that he did not pay, as he stopped payment before any of the notes given by the members of the company became due. None of the obligations or notes of Stevenson appearing in his account on the ledger were ever paid by the other members of the company. Deponent would state that when the parties agreed to fit out the expedition for General Mina, the said parties agreed to furnish each a sum not exceeding ten thousand dollars, each man to be responsible for his own quota alone. And it was understood that no member was entitled to inquire whether the other had paid his quota, so long as he was not called upon to pay any part of it himself. It was not a partnership concern, but a several one, each one being alone responsible for his individual share; the company had repeated meetings, but no minutes were kept.

Cross examined by Mr. Glenn.

The whole constituted one joint common fund, the profits arising from which were to be divided among the parties according to their several and respective interests.

Exhibit No. 11, *referred to in the foregoing answer.*

(Official.)

DEPARTMENT OF STATE,
Washington, April 15, 1840.

Claimants upon the Government of the Mexican republic, whose cases asking the interposition of the Government of the United States may have been presented to this department, or to the diplomatic agent of the United States at Mexico, prior to the 11th of April, 1839, are hereby notified, that pursuant to a convention between the two governments of that date, a joint commission to hear and decide upon the claims will meet within this city within three months from the 7th instant, which notice is prefixed to the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25th, 1843.

This is to certify, that the annexed copy of an official notice to claimants upon Mexico was published in the American and Commercial Daily Advertiser, on the 17th day of April, 1840, and that the same was published once only.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

(*No.* 3.)—*Claims on Mexico.*

Notice is hereby given to all persons having claims upon the republic of Mexico, which were submitted by the convention of April 11, 1839, to the mixed commission now sitting in the city of Washington, that more than half the time limited by the said convention for the session of said commission has already expired, and that it will close its labors within nine months from this date, yet not one-half of the claims which it was organized to adjust have been prepared for its consideration.

In consequence of a want of prepared cases, the business of the board has been delayed; claimants are, therefore, hereby urged to complete the preparation of their cases with the least possible delay, to the end that the commission may be enabled to accomplish the objects for which it was constituted.

By order of the Board of Commissioners.

ALEXANDER DIMITRY,
LUCAS DE PALACIO Y MAGAROLA,
Washington, 16th June. *Secretaries.*

Which said notice is prefixed to the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25, 1843.

This is to certify, that the annexed notice to persons having claims

upon the Mexican republic, signed by the secretaries to the Board of Commissioners, was published in the American & Commercial Daily Advertiser, on the 2d day of July, 1841, and every other day thereafter, for two weeks.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

Notice.

All persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, on the Government of Mexico, are hereby notified to present their vouchers, properly authenticated, to the undersigned, appointed special auditor by Baltimore county court, in the equity case of Philip E. Thomas and John White, trustees, against Dennis A. Smith and others, on or before the first day of January, 1842.

J. J. ATKINSON, *Auditor.*

Baltimore, October 27, 1841.

OFFICE OF THE AMERICAN,
Baltimore, September 8th, 1843.

This is to certify, that the annexed advertisement of notice to persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, was published in the American and Commercial Daily Advertiser, once a week, for three successive weeks, commencing on the 28th day of October, 1841.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

Notice.

In pursuance of an order of Baltimore county court, sitting as a court of equity, passed in the case depending in said court, wherein Philip E. Thomas and John White, trustees, are complainants, and Dennis A. Smith and others are defendants, notice is hereby given to all persons having claims upon the funds awarded to the Mexican Company of Baltimore, and to Dennis A. Smith, by the commissioners under the treaty between the United States and Mexico, to file their claims with the undersigned, special auditor in the above case, with the vouchers and proofs to support the same, on or before the fifth day of October next, otherwise they may be debarred from the benefit of the distribution of the funds aforesaid, which will thereafter be made.

J. CARRERE, *Special auditor.*

Which notice is prefixed to the following certificate of publication:

OFFICE OF THE AMERICAN, BALT., *Nov. 2d,* 1843.

This is to certify that the prefixed notice was published in the American once a week for three successive weeks, commencing 5th September, 1843. DOBBIN, MURPHY & BOSE.

Exhibit O G, No. 12, *referred to in the foregoing answer.*

(Copy.)

I hereby, by virtue of the power and authority in me vested, as trustee of the estate of Lyde Goodwin, of the city of Baltimore, merchant, transfer, set over and assign to Robert Oliver, of the said city, one share or one undivided ninth part of the claim of the Baltimore Mexican Company on the Government of Mexico, for supplies furnished to General Xavier Mina, commander of an expedition which sailed from this port in the year 1816 to the aid of the Republic of Mexico, belonging to the estate of said Lyde Goodwin, and will execute any other instrument of writing which the said Robert Oliver may require, for the more effectual security to him of said share.

(Signed) GEORGE J. BROWN,
Trustee of Lyde Goodwin.

Witness: JAMES M. BURN.

Baltimore, March 21, 1825.

Exhibit O G, No. 13, *referred to in the foregoing answer.*

Filed 21st March, 1846, in the case of Thomas & Smith *vs.* Dennis A. Smith and others, in Baltimore county court.

THOMAS & WHITE
vs.
D. A. SMITH and others.

The petition and claim of Thomas P. Alricks, permanent trustee of Lyde Goodwin, an insolvent debtor, of the city of Baltimore.

Your petitioner respectfully states, that said Goodwin applied for and obtained from the commissioners of insolvent debtors for the city and county of Baltimore, the benefit of the insolvent laws on the 25th April, 1834.

Your petition further states that he was appointed permanent trustee of said Goodwin by Baltimore county court, and gave bond, with security approved by said court, for the faithful discharge of his duties as such trustee; all of which will appear by reference to the paper herewith filed, marked petitioner's exhibit A.

Your petitioner further states that said Goodwin had a claim (to) the funds of the Baltimore Mexican Company, brought by the proceedings in the cause before this honorable court for distribution; that the said claim of Goodwin arose out of services rendered by him as ship's husband and agent of the said Mexican Company in purchasing the cargo, and attending to the disbursements and keeping the accounts of the said company, under an agreement with said company, made while the services were being performed, in the summer or fall of the year 1816; that he should receive therefor five per centum upon the amount to be recovered by said company from Gen. Mina, or the Mexican government; all of which will appear by reference to the proceedings in the above cause, to which your petitioner begs leave to refer.

Your petitioner further states, that George M. Gill, permanent trustee of said Goodwin under his, said Goodwin's, application for the benefit of the insolvent laws on the 25th February, 1817, and as such trustee has filed his petition in this case, claiming said commissions belonging to him as the legal assignee of said Goodwin, as will appear by his said petition and the proceedings thereunder.

Thereupon your petitioner prays that so much of said commissions, if there be any part thereof which does not vest in said Gill as trustee as aforesaid, may be awarded by this honorable court to your petitioner, and as in duty bound he will ever pray, &c. T. P. ALRICKS.

G. L. DULANY, *Solicitor of Alricks.*

Exhibit O G, No. 14, *referred to in the foregoing answer.*

THOMAS & WHITE
vs.
SMITH and others. } Equity side of Baltimore county court.

In the matter of the petition of Thomas P. Alricks, permanent trustee of Lyde Goodwin in the above case.

Mr. BRADFORD: Please enter an appeal in the above, on behalf of said trustee, from the decree of the court therein distributing the funds in said cause. G. L. DULANY,

Solicitor for T. P. Alricks, permanent trustee of L. Goodwin.

Afterwards, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-three, the said Charles H. McBlair, by his solicitors aforesaid, filed in the circuit court here his amended bill to the original bill of complaint, in the words and of the tenor following, to wit:

And your orator further sheweth to your honors, that Lyde Goodwin, having become insolvent in 1834, applied for the benefit of the insolvent laws of Maryland, under which application Thomas P. Alricks was appointed permanent trustee, and your orator having applied to said Thomas P. Alricks for a transfer and release of any claim he might have, as such permanent trustee, to the claim in this bill mentioned, on account of the Mexican claim or commissions; the said Thomas P. Alricks, by an instrument sealed with his seal, and dated the 30th day of March, 1852, reciting the facts of such insolvency and appointment of him as permanent trustee of said Lyde Goodwin, did assign, in consideration of the premises and of one dollar, and release to your orator as administrator of the said Lyde Goodwin, all the right, title and interest, at law or in equity, which he the said Thomas P. Alricks might have in or to said claims or the funds of the Mexican Company against the executors of Robert Oliver, deceased, as permanent trustee aforesaid; which deed is to the court exhibited, marked No. X, upon which is endorsed the following agreement:

It is agreed that this amendment may be filed and stand as part of the original bill.

HENRY WINTER DAVIS, *for comp'ts.*
J. M. CAMPBELL, *for defendants.*

1157.

Afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-three, the said Charles H. McBlair, administrator as aforesaid, by his solicitors aforesaid, filed in the circuit court here his amended and supplemental bill of complaint in the words and of the tenor following, to wit:

To the judges of the circuit court of the United States for the district of Maryland.

Charles H. McBlair, of the city of Baltimore, a citizen of the State of Maryland, brings this his amended and supplemental bill against Charles Oliver and Robert M. Gibbs, citizens of the State of New York.

And thereupon your orator complains, and says:

That, on the 9th day of June, in the year 1841, the commissioners appointed under and according to the convention with Mexico of the 11th of April, 1839, to whom all claims of citizens of the United States upon the Mexican government, statements of which had been presented to the Department of State, or to the diplomatic agent of the United States at Mexico, soliciting the interposition of the United States prior to the of that convention, made the following award, to wit:

Oliver's case.

Under the denomination of Oliver's case were comprehended two distinct claims, i. e.:

1st. The claim of Dennis A. Smith amounting to $84,230 72; and

2d. The claim of the Mexican Company of Baltimore, amounting to $160,563 72. Both sums of money being for arms, vessels, munitions of war, goods, and money, furnished by said Smith and the said company respectively to General Mina, for the service of Mexico in the years 1816 and 1817, and the Mexican and American commissioners in deliberating upon the first of the above claims, to wit: that of Dennis A. Smith, having disagreed as to the time from which interest thereon at the rate of six per cent. thereon should commence to run; and as to the correctness of an item of $10,000, part of the aforesaid sum of $84,230 72, the claim with that exception having been unanimously agreed to be correct, they referred the aforesaid points in dispute to the umpire, who, upon the third instant, transmitted his decision to the board upon the disputed points so referred to him as aforesaid, wherein and whereby he decides that the Government of Mexico is held to pay an interest upon the aforesaid sum of $84,230 72, after deducting therefrom the sum of $625, being the excess of charge in the disputed item of $10,000 for loss on 2,500 muskets.

Now, in order to carry out the principles established by the decision of the umpire in this case, and at the same time evince our respectful acquiescence in that decision, we do hereby unanimously agree and decide that the Government of Mexico shall pay to Philip E. Thomas and John White, trustees, to whom the same has been assigned and transferred by Dennis A. Smith, in trust for whom it may concern,

according to the rates of their respective interests, the sum of $141,754 69, being the one-half of Smith's claim allowed as aforesaid by the umpire, with interest thereon at the rate of 6 per cent. per annum from the 15th day of April, 1817, and one-ninth of the amount of the shares claimed by the Mexican Company of Baltimore, being one of the said Smith's two shares in the stock of said company, with interest upon the said one-ninth at the rate of five per centum per annum from the fifteenth day of April, 1817, that being the rate of interest and the date from which it shall, according to the decision of the umpire, be computed upon the claim of the said company against Mexico.

And we do also, from the same motives and under the same spirit, unanimously decide and decree that the Government of Mexico shall, according to the decision of the umpire, on the 2d claim, to wit, that of the Mexican Company of Baltimore, pay to David M. Perine and John Glenn, trustees for Robert Oliver's legal representatives, and whomsoever else it may concern, in the ratio of their respective interests, the sum of $417,427 47, being the remaining half of the said Dennis A. Smith's individual claim as allowed by the umpire, with interest thereon, from the date and at the rate allowed by the umpire; and the remaining eight shares of the Mexican Company of Baltimore, with interest thereon, at the rate of five per centum per annum, from the 15th day of April, 1817, up till the date of this award; the said Smith and the other stockholders of the said company having assigned and transferred to the said David M. Perine and John Glenn, in trust for those interested, their respective interests; the said Smith the remaining half of his individual claim, and he and the other members of the said company the remaining eight shares of the stock of that company, which eight shares of the company's stock, and the remaining half of the said Smith's individual claim, with interest thereon, as above stated, constitute the sum above, and hereby decreed to the last above mentioned trustees, a copy of which decree or award will be found on pages 99, 100, 101, of the printed record herewith exhibited.

That the Mexican Company of Baltimore, in the said decree mentioned, consisted in 1816 and 1817, at the time of the furnishing of the articles mentioned in the decree, of nine parties, and each of whom held one-ninth interest in the said claim, to wit: D'Arcy and Didier, Hollins and McBlair, Descaves and Mercier, Dennis A. Smith, Jeremiah Sullivan and John Sullivan, John Gooding, James Williams, Thomas Sheppard, Lyde Goodwin, all of Baltimore, who united for the purpose of supplying General Xavier Mina with arms, money, munitions of war, goods, &c., for the aid of the people of Mexico, in their war of independence against Spain.

That the Congress of Mexico, on the 19th July, 1823, having declared by their decree of that date, General Xavier Mina to have deserved well of his country, did, by their decree of the 28th June, 1824, decree that—

The debts which may be proved to have been contracted for the

service of the nation by the generals declared to have deserved well of their country, are hereby acknowledged to be good against the nation.

That, under this decree, the said Mexican Company of Baltimore presented their claim to compensation for the supplies furnished General Mina to the Government of Mexico, accompanied with the proofs requisite to sustain it, through the instrumentality of Robert Oliver, whom they constituted their attorney in fact, by power of attorney, dated 22d March, 1825, and who appointed John Mason, jr., and Dennis A. Smith, by power of attorney, at the foot of the said power of attorney to Robert Oliver, dated 24th March, 1825, all of whom accepted and acted under said powers of attorney, copies whereof will be found on pages 157, 158, of the printed Record, herewith filed.

That the interposition of the Government of the United States in behalf of said claims was solicited at various times, but especially by the agent of said company, Lyde Goodwin, who was also a member thereof, by his letters of the 23d of June, 1824, to John Quincy Adams, Secretary of State, and of the 19th March, 1825, to Henry Clay, Secretary of State, copies whereof are found on pages 299 and 300 of the printed record aforesaid.

That on the organization of the said Board of Commissioners, the said John Mason, jr., and one Abraham Miller, as agents of the said company, on or about the 26th April, 1841, presented a memorial to the said board on behalf of the owners of the claim of the said Mexican Company of Baltimore, stating its origin and nature, and praying that it be allowed on the proofs produced.

That on the 8th of May, 1841, John Sullivan, the survivor of Jeremiah and John Sullivan, and one of the survivors of the said Mexican Company of Baltimore, joined with sundry other persons, including the defendants, as executors of Robert Oliver, claiming to be interested in the claims of that company under various assignments from several of its members in a deed to John Glenn and David M. Perine, which assigned to them "all the right, title, and interest in and to the said claims of the Mexican Company of Baltimore," then pending before the commissioners under the convention with Mexico, in trust to receive the proceeds and deposit the same in the Mechanics' Bank of Baltimore, there to remain till the same should be divided and distributed according to the rights of the parties respectively claiming or to claim any part of the same.

That under this deed and the decree of the commissioners above set forth, the said John Glenn and David M. Perine received from the United States at various times, partly in certificates of stock and partly in money, the sum awarded to them on account of the Mexican Company of Baltimore, and interest thereon according to the said award.

That on the 4th day of October, 1841, Philip E. Thomas and John White exhibited their bill of complaint before Baltimore county court, against the said John Glenn and David M. Perine, Dennis A. Smith and others, for the purpose of ascertaining the parties entitled to the proceeds of the claim of the Mexican company in the hands of the

said trustees under the award; in which suit it was decreed, that the representatives of Lyde Goodwin were entitled to a commission of five per centum upon the amount awarded by the commissioners, under an agreement with the company for his services as agent of the company, and to one share of one-ninth of the net proceeds of said claim, by the decree of 15th November, 1843.

That the said Lyde Goodwin was not a party to the said suit.

That on the 2d of July, 1841, said Lyde Goodwin applied for the benefit of the insolvent laws, and obtained his final discharge on the day of , but no permanent trustee was appointed till the day of May, 1853, when your orator was duly appointed permanent trustee by the court of common pleas of the city of Baltimore, and gave bond with security, which was duly approved by said court on the 22d June, 1853, whereupon all the title of said Goodwin which passed under his said application vested in your orator for the benefit of his creditors at the date of his application.

That the said Lyde Goodwin departed this life on or about the day of , in the year, 1843, and pending the said suit in the lower court; and on the 13th day of March, 1852, letters of administration on the estate of said Lyde Goodwin were granted to your orator by the orphan's court of Baltimore city.

That George M. Gill, trustee of Lyde Goodwin under his application for the benefit of the insolvent laws in 1816, exhibited prior to the decree of 15th November, 1843, one or more petitions in said suit, claiming to be entitled to the said commissions and share of one-ninth belonging to said Lyde Goodwin.

That the executors of Robert Oliver exhibited their petition in said suit after said decree on the 3d day of August, 1844, claiming the "one-ninth share of said company formerly belonging to Lyde Goodwin, and the commission of five per cent. claimed on behalf of Lyde Goodwin, and for the support of their claim they referred to the proofs and proceedings in the cause.

That by the final decree in the said cause, on the petitions of said George M. Gill on the 5th day of December, 1846, the said commissions and share of one-ninth was awarded to George M. Gill, as trustee of Lyde Goodwin.

That on appeal from said decree, the court of appeals, on the 23d day of June, 1849, reversed so much of the same as gave any portion of the claim to said George M. Gill, as trustee of Lyde Goodwin, and decreed the payment thereof by Glenn and Perine to Oliver's executors.

That on or about the 11th day of April, 1850, the respondents, as surviving executors of Robert Oliver, deceased, received either in person, or by their agents or assigns, from the said John Glenn and David M. Perine, the whole of the funds awarded by said decree, on account of the commissions and share of one-ninth of Lyde Goodwin, together with all accumulation of interest and dividends thereon, viz:

On account of the sum decreed to Lyde Goodwin's legal representatives for the five per cent. commission—

$2,575 23 of United States 5 per cent. loan, at - -	$2,575 23
20,160 43 of United States 6 per cent. loan, at - -	21,523 26
In money - - - - - - - - - -	1,952 23
Total on account of commissions - - - -	$26,050 72

On account of the share of one-ninth of Lyde Goodwin—

$3,998 55 of United States 5 per cent. loan, at - -	$3,998 55
32,093 03 of United States 6 per cent. loan, at - -	34,262 24
In money - - - - - - - - - -	3,045 64
Total on account of the share - - - - -	$41,286 43

That the whole amount thus received by the said surviving executors of Robert Oliver, on account of the commissions and share awarded to the legal representatives of Lyde Goodwin, is sixty-seven thousand three hundred and thirty-seven dollars and fifteen cents ($67,337 15) in money and stocks.

That of the whole of the said fund the said executors are trustees for your orator as the legal representative of Lyde Goodwin.

That the said executors of Robert Oliver obtained possession of the same, and now hold the same without any valid title in law or equity, as against your orator, and that the same was awarded to them by the decree aforesaid, not because they produced a good title to the same, but because there was no other persons before the court having title thereto, to whom the trustees Glenn and Perine, who claimed no title thereto themselves, could be decreed to pay and deliver the said stocks and money—they holding the same under the said deed of 8th May, 1841, which recited that "the executors of Robert Oliver are the assignees of the several interests of John Gooding, James Williams, and Lyde Goodwin."

That the only title of the executors of Robert Oliver, apparent on the proofs and proceedings in the said cause in which the said fund was decreed to them, consists in the following documents:

1st. A letter from Lyde Goodwin to Robert Oliver, of 11th January, 1825, proposing to assign to Robert Oliver his interest in the Mina claim; 1st, to secure him the sum then owing to him, and 2d, to obtain barely the means of support for the present, and saying that the sum he would require should not exceed two thousand dollars.

2d. A receipt of Lyde Goodwin to Robert Oliver for $500, on account of a share in the Mexican Company's claim on Mexico, which is transferred to him, dated the 15th February, 1825.

3d. Another receipt of the 24th March, 1825, for $500, on account of Lyde Goodwin's interest in the said claim on Mexico.

4th. Four checks for $500 each, in favor of Lyde Goodwin or bearer,

drawn by Robert Oliver, and dated respectively 15th Feb'y, 24th March, 13th April, 1st June, in the year 1825.

5th. Assignment by George J. Brown, provisional trustee of Lyde Goodwin, to Robert Oliver, dated 21st March, 1825, which instrument could pass no title to said share by reason of the incapacity of the provisional trustee to assign any part of the estate of an insolvent.

6th. An instrument dated 30th May, 1829, signed by Lyde Goodwin, reciting his indebtedness to Robert Oliver upwards of nine thousand dollars, and assigning, transferring and setting over to him the following objects, which were assigned to him many years ago, to secure the debt due by Goodwin to Oliver, viz: all his undivided ninth part, and right, title and interest, of every kind whatever, in the claim on the Government of Mexico, or the proceeds thereof; and also a claim on a certain Louis Mervin, with the object and intention of making a full and complete transfer to Robert Oliver of all Goodwin's right, title and interest aforesaid, in consideration of which Robert Oliver had agreed to balance the account of said Goodwin on his books, at the foot of which paper was the agreement of *of* said Oliver, in the following words: I confirm the above agreement.—Robert Oliver.

That the said instruments are incompetent to vest in Robert Oliver any title or interest, legal or equitable, in the proceeds of the claim of the Mexican Company of Baltimore on the Government of Mexico, awarded by the decree of the commissioners under the convention aforesaid, because the said claim at the dates of the several papers constituting the title of said Robert Oliver was not a legal and valid claim which the laws of the State of Maryland would recognise; but the said claim was void, because it originated in a violation of the neutrality laws of the United States, and so could not be recognised for any purpose of transfer or transmission to assignees, or executors, or administrators, prior to the convention with Mexico of the 11th April, 1839, which convention for the first time gave said claim a legal existence and validity before the laws of the United States or of any of the States.

That even if the said assignment, evidenced by the letters and receipts of Lyde Goodwin, of 1825, were operative to transfer the claim to Robert Oliver for any purpose, it would be only by way of mortgage or security for the debt then existing, and the executors are liable to account for the surplus of the fund, after paying so much of the said debt as was not paid by the proceeds of the Mina claim, which were realized about the year 1830 by Oliver, though received by his agents before May 30, 1829. That the assignment of 30th May, 1829, purporting to convey the equity of redemption of said Lyde Goodwin in said Mexican claim and Mirvin claim, is void in a court of equity, even if the Mexican claims were then assignable; because there was no consideration for the same; because Goodwin was in distressed and needy circumstances at the date thereof, and unable to protect his interests against the power of his creditor, Robert Oliver; because the value of the interest assigned was vastly disproportioned to and greater than the debt proposed to be balanced on the books of Oliver; and be-

cause said Robert Oliver had, at the date thereof, secured a part of the said Mervin claim, if not the whole thereof, which went far to liquidate the said debt, but which he did not disclose to said Goodwin at the time of said agreement.

That your orator is entitled to have the said several assignments declared void, and cancelled and delivered up, and to a decree for the payment and delivery to him, by said executors of Robert Oliver, of all the money and certificates of stock, with the interest and dividends by them received thereon, they having obtained the same under the pretext of the validity of the assignment evidenced by the papers aforesaid, when in truth and fact said papers gave them no title to said fund, and they must be treated as trustees of the said fund for your orator.

That though your orator was not a party to the accounts taken in the suits aforesaid, for the distribution of the said funds, and so is not bound by the same; yet he offers and is willing to accept the said account, and be bound by the same, so far as it purports to ascertain the amount of the commissions and share of said Lyde Goodwin, if the defendants will agree thereto.

That should the court consider the executors of Robert Oliver entitled to any portion of said fund under the assignments aforesaid, then your orator insists they must be treated as mortgagees, and held accountable for the whole fund, subject to the debt actually remaining due to their testator from Lyde Goodwin, after deducting therefrom the amount realized from the said Mirvin claim.

That in this contingency, your orator is entitled to a discovery of the books and papers of said Oliver, and of the debt due by Goodwin to him, and of the amount received from said Mirvin claim, and the time thereof, none of which matters has he any means of ascertaining otherwise than by the discovery of the said executors; and that in any aspect of the case he is entirely ignorant of, and has no means of ascertaining the precise description of the certificates of stock, their numbers, dates, or the sums for which they are respectively drawn, to which your orator is entitled, but by the discovery of the defendants, nor can he assert any several claim to any particular certificates of stock out of the general award otherwise than by the decree of your honorable court.

That he is informed that the said Mirvin claim was greatly larger than the whole debt due from Lyde Goodwin to said Robert Oliver, and that the amount actually realized therefrom, or which might have been realized therefrom but for the negligence of said Robert Oliver or his agents, was much more than sufficient to pay the whole of said debt, and your orator is entitled to an account and discovery of the amount and nature of said claim, and of the time and mode of its prosecution, and of the proceeds realized therefrom, and to a discovery and production of the books and papers of Robert Oliver, to enable him to prosecute such investigation with success.

That the said Robert Oliver departed this *this* life in the month of September, in the year 1835, having first duly published his will,

whereby he appointed Robert M. Gibbs, Charles Oliver, and Thomas Oliver executors thereof.

That said executors duly qualified as such and accepted the burthen of the said trust; but Thomas Oliver has since departed this life, leaving said Robert M. Gibbs and Charles Oliver sole surviving executors of the will of the said Robert Oliver, deceased.

That your orator, admitting the receipt by Lyde Goodwin of two thousand dollars, as evidenced by the checks above specified, on the faith of the assignment of the share of one-ninth of the claim of the Mexican Company aforesaid, while denying any right, legal or equitable, in the executors of Robert Oliver to hold any part of said fund under said assignment for any purpose, yet thinks it only fair, and therefore consents, that the executors shall be allowed the said two thousand dollars out of said fund with interest till the settlement of the claim, but expressly as matter of favor, and not as matter of right.

That from 1825 till his death, said Lyde Goodwin was insolvent, pressed for money, and without means to assert his rights at law, and labored continually under the erroneous belief that all his interest in the Mexican Company's claim was vested in his insolvent trustees under his applications prior to the 11th of April, 1839, and that if any interest remained it was conveyed by the assignments of 1825 and 1829 to Robert Oliver, as security for his claims, under the erroneous belief that his share in said company's claim was assignable, and it was not finally settled not to be assignable at that date till the decision and decree of the court of appeals in the above case, and the recent decisions of the Supreme Court of the United States, so that Lyde Goodwin was prevented during his lifetime, and while the funds were in the hands of Glenn and Perine, from asserting his title thereto, as well by his needy circumstances as by his mistaken and erroneous belief and impression of the operation of the assignments aforesaid. All which actings and doings, and of the said Robert Oliver, and of the said executors of Robert Oliver, in obtaining and retaining the said funds is contrary to equity.

In tender consideration whereof, and forasmuch as your orator is remediless at common law, and can find full relief only in a court of equity—

To the end, therefore, that the said respondents, Robert M. Gibbs and Charles Oliver, executors of Robert Oliver, deceased, may, upon their respective oaths, true, full, and perfect answer make to the matters aforesaid, and especially to the following interrogatories:

1st. Are they not executors of Robert Oliver, deceased?

2d. Did they not in person, or by their agents or assignees, receive the money and stocks above mentioned on account of the share and commission of Lyde Goodwin, or some, and what part thereof?

3d. Are not the instruments above set forth the only assignment under which they claimed title and received the funds aforesaid; or if any others, what are they?

4th. What is the nature and amount of the Mirvin claim? How much was realized from it; and when, and how?

5th. What was the amount and items of the debt of Lyde Goodwin at the dates of the assignments of 1825 and 1829 to Robert Oliver?

6th. Set forth a list of the books and papers of Robert Oliver, in their hands, relating to any of the matters aforesaid.

And that your orator may have a decree vacating the said assignments, and for the delivery to him of the money and stocks, or certificates of stock, with the interest and accumulations received by the executors aforesaid, after allowing them the two thousand dollars and interest as aforesaid, as to the said share and commissions.

And that the said assignment of 1829 may be decreed a mortgage as to the Mirvin claim, and the executors be compelled to account for the same and pay the surplus proceeds thereof, if any, after payment of the debt of Goodwin, to Oliver, to secure which it was transferred.

And should the same not equal the said debt, and the court be of opinion that said Oliver acquired any interest to said share of one-ninth by reason of said assignments, then, and in that contingency, that your orator may have a decree declaring the assignment of 1825 a mortgage, and the assignment of 30th May, 1829, in like manner a mortgage, and imperative as an absolute transfer of the equity of redemption; and that an account may be taken of the assets received under the decree aforesaid, on account of said Mexican claim for Lyde Goodwin's share, and of the amount of said debt after crediting the proceeds of the Mirvin claim; and that after full payment of such debt your orator may have a decree for the delivery to him of said stock and money, with the proceeds, dividends and interest.

And that the certificates of stock and money received by the executors on account of the commissions of Lyde Goodwin may be decreed to be delivered to your orator, and till such delivery that they may be enjoined from transferring said certificates to any third person, and that your orator may have such further relief as to your honors may seem equitable.

May it please your honors to grant to your orator the United States' most gracious writ of subpœna to the defendants, Robert M. Gibbs and Charles Oliver, surviving executors of Robert Oliver, deceased, to be directed, &c., &c., and your orator will ever pray, &c., &c.

G. L. DULANY,
HENRY WINTER DAVIS,
For comp't.

Each of the defendants, Robert M. Gibbs and Charles Oliver, is required to answer each and every of the above interrogatories numbered 1, 2, 3, 4, 5, 6.

And which said last mentioned paper is thus endorsed: "It is agreed this bill shall be filed as if on leave regularly had.

J. M. CAMPBELL, *for def'ts.*
H. WINTER DAVIS, *for compl't.*

Afterwards, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid,

by their solicitors aforesaid, filed in the circuit court here an agreement and exhibit thereto, in the words and of the tenor following, to wit:

Afterwards, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here an agreement and exhibit thereto, in the words and of the tenor following, to wit:

In the circuit court of the United States for the district of Maryland.

McBlair, adm'r of Goodwin,
vs.
Oliver's executors.

It is agreed that in this cause—

1st. That the complainant may read in evidence the record of proceedings of Baltimore county court and of the court of appeals of Maryland, in the suit of Philip E. Thomas and John White vs. Dennis A. Smith, John Glenn, David M. Perine, and others, upon the petitions of George M. Gill, trustee of Lyde Goodwin, against John Glenn and David M. Perine, and the executors of Robert Oliver, and the answers of said Glenn and Perine and Oliver's executors thereto, from the printed record of the Supreme Court, with the same effect that such proceedings could be read from a properly authenticated transcript of such record, the said petition being found on pages 32, 33 and 34, 36, 37 and 38, and the answers on pages 55, 56, 57, 58, 41, 42, 43, 44, and 45 of said printed record; and also on the petition of the executors of Robert Oliver, which is found on pages 177 and 178 of said printed record, for any purpose for which such proceedings may be competent evidence in this cause.

2d. It is further agreed, that the agreement of counsel, with all the accompanying documents printed in the case of Deacon vs. Oliver's executors, on appeal to the Supreme Court of the United States, shall be adopted and applied in this case, and may be read according to the terms of that agreement from the printed record of that case, contained between pages 33—52, inclusive.

3d. It is further agreed that the account of the auditor in the case of Philip E. Thomas and John White vs. Dennis A. Smith and others, in the printed record, may be used as showing the accurate account of the share and commissions of Lyde Goodwin in the Mexican Company's funds, and that the final report of the said Glenn and Perine to the court of appeals of Maryland, with the accompanying documents and orders of the court, may be read from a transcript certified by the clerk, as if all said documents were fully proved, and that in case the proceedings go to the master, the amount received by Glenn and Perine on account of Goodwin's share and commissions, and the amount by them paid to the defendants, shall be inquired into and established before the master.

4th. It is further agreed, that certificates for various sums, amount-

ing in the aggregate to the sum awarded on account of the Mexican Company's claim, were delivered to Glenn and Perine on the 27th October, 1841, which certificates were in the form of the copy herewith filed, marked copy No. 1.

That of the twenty instalments of five per cent. each, in which the claim was payable, three instalments were received by Glenn and Perine in money from the Mexican government through the Government of the United States, prior to the 27th November, 1846; two instalments in five per cent. stock of the United States, between the 27th November, 1846, and 7th January, 1847, and the remaining instalments covering all remaining due on the certificates granted to Glenn and Perine, as aforesaid, were paid by the United States to Glenn and Perine, in money, on the 30th October 1848, when the certificates were surrendered to the government. And that the said Glenn and Perine brought said moneys into court, and under various orders of Baltimore county court, in the said case of Thomas & White vs. Dennis A. Smith and others, invested the moneys aforesaid in United States stocks, as set forth in their report and the accounts in that suit, which stocks and the accumulations form the subject of the decree of the court of appeals.

It is also agreed, that from the printed record aforesaid the defendants may read in evidence Goodwin's deed to Brown, of the 26th February, 1817, and the notices from the State Department and orders of court, and notices of claimants under the treaty with Mexico, published by the State Department and under the direction of Baltimore county court, and the petition of Alricks as permanent trustee upon Goodwin's second application, and all the proceedings relating thereto.

It is admitted that upon Goodwin's third application in insolvency, Thomas P. Alricks was appointed and gave bond as provisional trustee of said Goodwin, as stated in defendant's answer.

That Goodwin made the deposition referred to in the defendant's answer, as O G, No. 10.

6th. It is agreed that the bond of the complainant, as trustee in insolvency of Lyde Goodwin, has been found, and was executed, approved, and filed, as alleged in the bill.

7th. That either party may take depositions before either of the commissioners of this court, on reasonable notice to the counsel of the opposite party, without the formality of taking out a commission or filing interrogatories.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Sol'rs for def'ts.
HENRY WINTER DAVIS,
For compl't.

Exhibit.—Certificate, copy No. 1.

No. 774. United States Treasury Certificate, C. T.
Under the Mexican Convention.

UNITED STATES TREASURY DEPARTMENT,
Register's Office, 27th October, 1841.

Whereas, the commissioners appointed to carry into effect the convention between the United States and the Mexican republic, concluded at Washington on the 11th of April, 1839, did, on the ninth day of June, 1841, award a certain sum to be due to David M. Perine and John Glenn, trustees of Robert Oliver's legal representatives and others. Now, therefore, be it known, that of the amount thus awarded there will be due and payable on the surrender of this certificate at this department, to the said David M. Perine and John Glenn, trustees, &c., or their assigns, the sum of fifty dollars, either in money or Mexican treasury notes, bearing interest at the rate of eight per centum per annum from the said ninth day of June, 1841, the date of said award, in conformity to the sixth article of the said convention, whenever the same shall have been received from the Mexican government into the treasury of the United States. And whenever any part of the amount awarded shall be paid into the treasury, then this certificate will be paid according to the proportion the amount received bears to the amount awarded. Such claimants and their assigns being hereby entitled to the same, and no other rights, as are conferred by the said convention and the act of Congress of June 12, 1840.

T. L. SMITH, *Register*.

$50. (Interest paid on this certificate to the 29th April, 1843.)

Afterwards, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and fifty-three, the said Charles Oliver and Robert M. Gibbes, executors as aforesaid, by their solicitors aforesaid, filed their joint and several answer and exhibit thereto, to the amended and supplemental bill of the said Charles H. McBlair, administrator as aforesaid, in the words and of the tenor following, to wit:

To the honorable judges of the circuit court of the United States for the fourth circuit and district of Maryland, sitting in equity.

The joint and several answer of Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver, to the amended and supplemental bill of Charles H. McBlair.

These respondents, saving to themselves all exceptions to said bill, whether for form or substance, for answer nevertheless thereto, or to so much thereof as they are advised it is material for them to answer unto, they answer and say:

That they admit that the mixed commission, which was constituted under the convention of 1839 with Mexico, passed on or about the 9th June, 1841, an award in what was called "Oliver's Case;" for the

term of which they refer to a copy thereof, filed with their original answer, and marked O G, No. 6.

That they admit that the Mexican Company of Baltimore, in the said award mentioned, consisted originally of 10 persons or firms, which number was subsequently reduced to 9, who are correctly stated in said bill, and that they were all of Baltimore, and the share of each one-ninth; and they further say, that the said Goodwin, who was one of them, was a citizen of the State of Maryland, and that said company was formed for the purpose of assisting, and did assist, General Mina, with munitions of war and other things, to revolutionize Mexico, then a province of Spain, a country at the time in amity with the United States.

That these respondents do not know whether the decrees of the Mexican government, mentioned in said bill, were passed, or their purport, or whether the said company made its claim upon the Mexican government under these decrees.

That they admit that the members of said company constituted Robert Oliver their attorney, by a power in writing, of which a copy is filed with their original answer, marked O G, No. 4; and that he accepted said power, and appointed John Mason, junior, and Dennis A. Smith as attorneys under him, as stated in said bill, and that said Mason and Smith accepted said appointment.

That they admit that the said Goodwin addressed to Mr. Adams and Mr. Clay the letters of 1824 and 1825 mentioned in said bill.

That they admit that the said John Mason, junior, and Abraham Miller presented to the mixed commissioners aforesaid a memorial on behalf of the owners of the claim of the said Mexican Company of Baltimore.

That they admit that, on the 8th May, 1841, the deed was executed to Glenn and Perine, as trustees; of which a copy is filed with their original answer, marked O G, No. 5.

That they admit that the said Glenn and Perine received at different times from the United States, partly in certificates of stock and partly in money, the sum awarded to them by the decree aforesaid.

That they admit that in October, 1841, Thomas & White filed their bill in Baltimore county court in equity, against the said Glenn and Perine and others for the distribution of the stocks and moneys received under the award aforesaid, and that said stocks and moneys were brought into said court for such distribution.

That they admit, that the said Lyde Goodwin was not a party to the said suit, but they also aver that the said Goodwin resided in the city of Baltimore from the year 1816 to the time of his death, which happened on or about the 2d December, 1845, and that notices to persons having claims against the Government of Mexico, to present them to the mixed commission, were published in one or more of the daily newspapers of Baltimore in the year 1840 and 1841, and that after the funds or certificates of stock and money aforesaid were received by the said Glenn and Perine, as trustees, and brought into Baltimore

county court aforesaid as a court of equity in the suit aforesaid, the said court by its order of the 4th October, 1841, directed, for the purpose of giving notice to all persons interested to present their claims, that the auditor should cause an advertisement to be inserted in a daily newspaper published in each of the cities of Baltimore, Philadelphia, and New York, calling upon all persons interested in the claims of the Mexican Company of Baltimore, on the Government of Mexico, to present their claims and vouchers on or before a certain day therein named, and that said advertisements were made as directed; and that said court afterwards, on the 4th September, 1843, passed a further order that the parties having claims upon the funds awarded by the commissions under the treaty between the United States and Mexico to the Mexican Company of Baltimore, should be, and they were thereby required, to file the same with the auditor on or before the 5th day of October then next ensuing, and that notice of this order last mentioned was given by said auditor, by advertisement, published in a Baltimore, Philadelphia, and New York daily paper, and that the tenor of said notices will appear by copies of the same filed as aforesaid, and marked O G, No. 11; and that the said Lyde Goodwin never made any claim whatever before the mixed commission aforesaid, or in the cause herein before mentioned as instituted in Baltimore county court, for the distribution of the funds arising from the Mexican Company's claim on Mexico, although it is well known, and these respondents aver it to be the fact, that said Goodwin, on the 8th May, 1841, made before Henry S. Sanderson, notary public, in the city of Baltimore, the affidavit of which a copy is filed, with their original answer, marked O G, No. 9, knowing that it was to be used, and for the purpose of being used, before the mixed commission in support of the claim made by said Glenn and Perine under the deed aforesaid of the 8th May, 1841; and afterwards, to wit, sometime between the 10th June and 28th October, 1843, he, the said Goodwin, was examined as a witness in the cause in Baltimore county court hereinbefore mentioned, and made the deposition, of which a copy is filed, with their original answer, marked O G, No. 10.

That they admit and aver, that said Goodwin, on or about the 25th February, 1817, applied for the benefit of the insolvent laws of Maryland, and on the day following executed to George J. Brown, his provisional trustee, a deed of assignment of all his property and claims, real, personal, and mixed, a copy of which is herewith filed, marked G O, No. 1, and that said Brown gave bond as such provisional trustee, with security, on the 26th February, 1817, which was approved, and that Goodwin, afterwards, to wit, on the 28th April, 1834, applied a second time for the benefit of the same laws, and they believe, and therefore charge, that in the schedule annexed to his said second application no mention whatever is made of any interest held or claimed by him either in the Mexican Company or in his commissions as its agent, and that the permanent trustee, duly appointed and qualified, upon such his second application, was Thomas P. Alricks, of the city of

Baltimore, and that the said Alricks was represented by John Nelson, esq., in the application made to this respondent, Gibbes, on the 27th March, 1837, for the letters concerning which written and deposition made by said Nelson on the subject thereof these respondents refer to copies filed, with their original answer, and marked O G, No. 8; and that the said Alricks was privy to the existence of the case in Baltimore county court hereinbefore mentioned, and a party thereto, and that in his capacity of permanent trustee of said Lyde Goodwin on his said second application, he filed a petition in said case claiming, not said Goodwin's share in the Mexican Company, but his commissions, as will appear by a copy of said petition filed with their original answer, and marked O G, No. 13, and that the decision of said county court was against the claim of said Alricks as set up in said petition, and that said Alricks entered an appeal from said decision, as appears by a copy of the solicitor's order to that effect, filed as aforesaid, and marked O G, No. 14, and that the decision of the court of appeals in favor of the executors of Robert Oliver hereinafter mentioned was pronounced with the claim before it of the said Alricks, as permanent trustee of the said Goodwin, on his application in 1834.

That they admit that, on the 2d July, 1841, the said Lyde Goodwin applied a third time for the benefit of the insolvent laws of Maryland, to the commissioners of insolvent debtors for the city and county of Baltimore, and that on the 2d May, 1853, the complainant was appointed his permanent trustee on said application by the court of common pleas for Baltimore city; but they deny that he has given any bond as such, having been informed that search has been made among the papers relating to said application, and that no bond is among them; and they are also advised, and therefore charge, that the said court of common pleas had no power to make such appointment; and the further charge that, upon the said third application of said Goodwin, the commissioners of insolvent debtors aforesaid appointed Thomas P. Alricks provisional trustee for said Goodwin's creditors upon the 2d July, 1841, and that the said Alricks gave bond as such provisional trustee, with security, which bond was received by said commissioners, and filed by them among the papers and proceedings relating to said third application.

That they admit that the said Goodwin died; and aver that his death took place on or about the 2d December, 1845; and that they also admit that letters of administration on his estate were granted to the complainant by the orphan's court for Baltimore county; and they also admit the death of Mr. Oliver, in December, 1834, and that they are his surviving executors.

That they admit that George M. Gill was, in March, 1837, or thereabout, appointed permanent trustee of Lyde Goodwin, upon his first application for the benefit of the insolvent laws herein before mentioned; and that in the suit in Baltimore county court herein before mentioned, the said Gill, as such trustee, filed his petitions, claiming out of the fund the share of said Goodwin in the Mexican Company, and said Good-

win's commissions as agent for said company; and that to such, his petitions, he made these respondents, as executors of Robert Oliver, parties defendants; and that in the answers of said executors, and otherwise in said suit, the said executors of Robert Oliver claimed for his estate the said share and commissions; and that the said county court decreed said share and commissions to said Gill; and that on appeal from said decree, the court of appeals reversed said allowance to said Gill, and awarded said share and commissions to said executors, as will appear by a copy of said decree of the court of appeals, filed as aforesaid, marked O G, No. 7; and that under process issued from said court to enforce said decree, the trustees herein before mentioned, Glenn and Perine, paid and delivered to the executors of Robert Oliver, on the 11th April, 1850, on account of Goodwin's commissions:

$2,188 95	U. S. loan, 5 per cent., at - - -	$2,188 95
17,136 37	do. 6 do. at - - -	18,294 78
In money - - - - - - - -		1,659 39

And on account of Goodwin's share:

$3,398 77	U. S. 5 per cent. loan, at - - -	$3,398 77
27,279 08	do. 6 do. at - - -	29,122 90
In money - - - - - - - -		2,588 80

In addition to which there was received by them on the same day a further amount of $888 12 in stock and money, which is to be credited to Goodwin's share, though retained at first upon another account; and on the 5th September, 1851, there was paid to them by the United States $118 81, on account of said share, and $3,084 12 on account of said commissions; but these respondents deny that they received or hold the said fund, or any part of it, in trust for the complainant; and while they submit to this honorable court the legal effect and operation of the said decree of the court of appeals and proceedings in said case, they plead and rely on the same in bar of the relief now sought, and pray to have the benefit of the said bar as fully as if the same had been presented in any form of pleading appropriate thereto. That for the title of these respondents, on the proofs and proceedings in said cause, they refer to the record thereof; but they admit that said Goodwin wrote said Oliver a letter, under date of the 11th January, 1825, a copy of which is filed as aforesaid, marked O G, No. 2, and gave said Oliver two receipts for $500 each, copies of which are filed as aforesaid, marked O G, No. 3; and that Oliver drew and paid the 4 checks described in said bill; and that Brown, provisional trustee of said Goodwin, on his first application aforesaid, executed to Oliver the assignment, a copy of which is filed as aforesaid, marked O G, No. 12, and that a written instrument was signed by Goodwin, under date of the 30th May, 1829, and confirmed in writing by said Oliver, in the terms which will appear by a copy thereof, filed as aforesaid, marked O G, No. 4½.

That these respondents charge that the said assignment of May, 1829, was made bona fide, and for a valuable consideration appearing on the

face; and while they admit that said Goodwin was at the time in needy circumstances, they deny that said assignment was extorted from his necessities; and aver that the value of what was then assigned was less at the time in amount than the debt which it then discharged. That these respondents believe and charge that $2,000 was the full market value of said Goodwin's share of one-ninth in the Mexican Company, in the spring of 1825; and that said Oliver bought two other shares at the same rate, at or about that time; and that they afterwards fell so as to be of no value in the market on the 30th May, 1829; and they are satisfied and aver it to be their belief, that, without the active exertions of said Oliver, and his influence and readiness to make the heavy expenditures necessary for its prosecution, the Mexican Company's claim would never have been recovered; and that the value which the claim acquired subsequently to his interest in it was mainly owing to him.

That they do not know, and have no information, as to the amount of Goodwin's claim on Mervin, mentioned in the assignment of the 30th May, 1829, except so far as a draft for $2,000 drawn and passed to Mr. Oliver in 1820, by Goodwin, shows that Goodwin assured that amount to be in Mervin's hands, (though Mervin neither accepted nor paid it,) and except, also, so far as the settlement hereinafter detailed may warrant the supposition that there was a further amount of $3,850 62½ due by Mervin to Goodwin, the claim on Mervin never was settled by him, nor did he ever make any admissions or promises in regard to it, so far as they know or are informed and believe.

These respondents believe that it was, in point of fact, settled in 1830, by representatives of the mercantile house of Antoine De Frias and Company, as is hereinafter stated, though the settlement does not name Mervin.

On or about the 30th April, 1830, Mr. Oliver (being at that time the owner of the rest of it) received a conveyance of two-sixths (⅓ths) of the Santa Amelia plantation and appurtenances, in the Island of Cuba, from Cornelius Souchay, and the representatives of Antonio de Frias, deceased, the said Cornelius and Antonio having been members of the aforesaid firm of De Frias and Company, of Havana, in full settlement of a debt of $25,919 due to Mr. Oliver on that firm's two notes in his favor, amounting to that sum, with interest; and also in full of a claim of the said firm's of $5,850 62½ of Lyde Goodwin's, the whole amounting at the time of settlement to the sum of $36,060 25, including the interest of demurrage.

These respondents are informed and believe that Mr. Oliver, in 1821, directed De Frias and Company to lay an attachment on Goodwin's property for the advances which he had made to Goodwin in 1819 and 1820; but that they never informed him whether they had done so or not; and it was only after he had instituted suit against Souchay and the representatives of De Frias for the amount of the two notes above mentioned of De Frias and Company, that they acknowledged themselves liable not only for the amount of those notes but for the further sum of $5,850 62½ above mentioned, and settled both claims by the

aforesaid conveyance, these respondents knowing of no property of Goodwin's in Cuba but what he alleged to be in Mervin's care; and being informed that De Frias and Company had funds of Mervin in their hands, or under their control, believe that the said item of $5,850 62½ is for the Mervin claim. They know of no assignment of this claim to Mr. Oliver, prior to the one of 1829, unless Goodwin's draft for $2,000 on Mervin be deemed such, nor do they know when or how De Frias & Company or their representatives became possessed of the said $5,850 62, nor how the claim arose, nor its original amount; but they deny that Mr. Oliver had any knowledge at the time of the assignment of May, 1829, that any part of said Mervin claim had been secured. What the value of the said one-third of the Santa Amelia plantation was at the time of its conveyance to Mr. Oliver by Souchay and De Frias's heirs, these respondents have no means of stating. In the year 1826, Mr. Oliver, when reluctantly authorizing his agent to take this interest if he could do no better, in satisfaction of his advances for De Frias & Company, amounting to $25,919, as already mentioned, stated his belief that the said third was not worth more than $20,000. On the 30th June, 1836, Mr. Oliver's representatives sold the whole plantation and appurtenances to George Knight for $108,000, of which upwards of $11,000 is still due, and on that day the cost of the plantation to him and his estate, after crediting all that had been received from it, was $171,479 80, which sum includes the $36,060 25 above mentioned.

These respondents are informed and believe, that all the transactions which took place between Mr. Oliver and Goodwin, prior to 1819, were settled before the commencement of that year, and that on the 13th July, 1819, said Oliver loaned said Goodwin $1,500, to be returned in 90 days with interest, and on the 9th August next following, the further sum of $500; and that on the 31st October, 1820, he discounted for Goodwin said Goodwin's draft on Mervin already mentioned, and paid him $1,200 on account thereof; and on the 2d November, 1820, the balance after deducting $41 33 of interest from the time said draft had to run; and that in 1825 the said Goodwin received from said Oliver the sum hereinbefore particularly mentioned on account of his share in the Mexican Company.

These respondents are also informed and believe and therefore charge, that only the assignment ever made by said Goodwin to said Oliver of his claim on Mervin was that of the 30th May, 1829, unless the draft for two thousand dollars may be considered an assignment to that extent, and that no assignment of Goodwin's commissions to him was made prior to that of the 30th May, 1829, which they believe was meant to carry and does convey the said commissions as well as the other things embraced by it.

These respondents further charge, that all the moneys hereinbefore mentioned to have been paid to them by the said Glenn and Perine, trustees, were by said Glenn and Perine received under the said deed of trust exclusively for the estate of the said Oliver, and were so received

by them more than three years prior to the filing of the original bill in this case.

These respondents, in addition to the defences hereinbefore mentioned and arising out of the facts above set out, plead and rely upon the statute of limitations in bar to the relief prayed by said bill; and also plead in bar that the complainant upon the case made by the bill has adequate remedy (if he has any, which is denied) at law in the premises; and they further plead in bar, that the said complainant doth not set out in what character he claims, whether as permanent trustee or administrator, and that he cannot unite in the same bill his claims in both characters; and further plead the complainant's inability to bring a new title into this suit not existing at the time of its original institution, and accruing since the removal of the cause into this court; and they pray to have the same benefit of all these defences which they might enjoy by any form of pleading.

And these respondents further say, that letters testamentary on the estate of the said Oliver were granted them and their deceased co-executor (Thomas Oliver) on the 10th June, 1835, and that public notice was given by them in that year in conformity with the testamentary laws of Maryland, to all persons having claims against said deceased, to exhibit the same to them with the vouchers therefor, on or before the 16th March, 1836; and that neither the said Lyde Goodwin nor the said complainant, nor any one of the provisional or permanent trustees of said Goodwin, exhibited any claim to them within the time so *so* limited by law, and they rely upon and plead these facts in bar to the claim of the complainant.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Solicitors for respondents.
R. M. GIBBES,
Executor of Robert Oliver, deceased.
R. M. Gibbes, executor of R. Oliver.

UNITED STATES OF AMERICA,
District of Rhode Island, to wit.

Be it remembered that on this 26th day of August, A. D. eighteen hundred and fifty-three, before me the subscriber, a commissioner duly appointed by the circuit court of the United States, in and for the Rhode Island disctrict, personally appeared Robert M. Gibbes, and made oath on the Holy Evangely of Almighty God, that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

WM. GILPIN,
Commissioner circuit court U. S.,
Rhode Island district.

RHODE ISLAND DISTRICT, *ss.*

[Seal's place.] The president of the United States of America, to William Gilpin, of the city and county of Newport, in said district, esquire, greeting:

You are hereby appointed by the circuit court of the United States, for the first circuit within and for the said Rhode Island district, under the authority conferred on them by act of Congress, a commissioner for said district to take depositions, recognizances of bail, and to do other acts by the laws of said United States authorized, in all causes, and matters and things cognizable or depending, or which may hereafter depend and be cognizable in the said circuit court of said district of Rhode Island. Witness the Hon. Roger B. Taney, at Providence, this thirty-first day of August, A. D. 1853.

JOHN T. PITMAN, *Clerk.*

Exhibit to answer, G O, No. 1.

This indenture, made this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventeen, between Lyde Goodwin, of Baltimore county, in the State of Maryland, of the one part, and George J. Brown of the other part: Whereas on the application of Lyde Goodwin to Joseph H. Nicholson, esq., one of the judges of Baltimore county court, for the benefits of the acts of Assembly for the relief of insolvent debtors, the said Joseph H. Nicholson did refer the said application together with the schedule, petition and other papers, to the commissioners of insolvent debtors for the city and county or Baltimore. And whereas the said commissioners on the 26th day of February, 1817, appointed the above named George J. Brown provisional trustee for the benefit of the creditors of the said Lyde Goodwin, and did order and direct that the said Lyde Goodwin should execute a deed to the said trustee for all his property, estate and effects, and should deliver the same to the said trustee, together with his books, papers, accounts, bonds, notes, and evidences of debt, agreeably to the provisions of the acts of Assembly in such cases made and provided. Now this indenture witnesseth, that the said Lyde Goodwin in pursuance of the premises, and in consideration of one dollar current money to him paid by said George J. Brown, hath granted, bargained, and sold, released, conveyed, assigned, transferred and set over, and by these presents doth freely and absolutely grant, bargain and sell, release, convey assign, transfer, and set over unto the said George J. Brown, his heirs, executors, and administrators, all and every the household goods and furniture, effects and chattels, debts and sum or sums of money, belonging to and due or owing to him, the said Lyde Goodwin, as are in the schedule of the said Lyde Goodwin particularly mentioned, and also all other the property and estate, real, personal and mixed, of what kind, nature or quality soever, (excepting the wearing apparel, bed and bedding of the said Lyde Goodwin,) which the said

Lyde Goodwin has or claims any title to or is in any respect entitled to in possession, remainder or reversion: to have and to hold the same, and every part or parcel thereof, unto him, the said Lyde Goodwin, his heirs, executors, administrators and assigns forever; in trust for the creditors of the said Lyde Goodwin, and for their use and benefit agreeably to the act of Assembly entitled an act for the relief of sundry insolvent debtors, and the several supplements thereto. In witness whereof the said Lyde Goodwin hath hereunto set his hand and affixed his seal, the day and year first above written.

LYDE GOODWIN, [SEAL.]

Signed, sealed, and delivered in the presence of—
WM. M. MEDCALF.

BALTIMORE COUNTY, *ss.*

On the twenty-sixth day of February, in the year eighteen hundred and seventeen, came Lyde Goodwin, before us, two justices of the peace for the county aforesaid, and acknowledged the within instrument of writing to be his act and deed, according to the true intent and meaning thereof, and the act of assembly in that case made and provided.

Acknowledged before WM. M. MEDCALF,
JOHN MITCHELL.

Afterwards, to wit, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-three, the said Charles H. McBlair, executor as aforesaid, by his solicitors aforesaid, filed in the circuit court here an affidavit in the words and of the tenor following, to wit:

STATE OF MARYLAND,
Baltimore city, to wit:

Personally appeared before the subscriber, a justice of the peace for said city, Thomas P. Alricks, and made oath in due form of law that he was appointed trustee of Lyde Goodwin, under his application for the benefit of the insolvent laws, made subsequent to the year 1830 and prior to the year 1837; that in the performance of his duty he was led to inquire into the condition of the insolvent estate committed to his charge, and in endeavoring to find out what claims and other property belonged to it he discovered that said Goodwin was a member of the Mexican Company of Baltimore, and as such had certain claims upon the Republic of Mexico; that at first he supposed that these claims would vest in him as trustee as aforesaid, but that further examination he discovered that they belonged to George M. Gill, who had previously been appointed permanent trustee of said Goodwin under his application for the benefit of the insolvent laws of the said State of Maryland, in the year 1817; that deponent being an attorney at law and the legal adviser of said Goodwin, as well as his trustee, on fully

ascertaining the nature of the claim of the Mexican Company, informed him that his interest in said claim had vested in and become the property of his trustee, the said George M. Gill; that, accordingly, said Goodwin always afterwards appeared to act under this belief and impression until the day of his death, never making any claim to his original share in said company nor to his commissions, though he was fully informed that said Gill, as his trustee under his aforesaid application of 1817, was endeavoring, by proceedings in equity, to recover both the one and the other. And the said Alricks further deposed that he himself always believed that the share of the said Goodwin in said Mexican Company's claim, as well as his commissions, did vest in the said Gill, as his trustee, until, by the decision of the Supreme Court of the United States, it was determined that they had no jurisdiction to review the decision of the court of appeals against the title of the said Gill.

Sworn before this 26th day of November, 1853.

WM. N. BRICE.

Upon which is endorsed the following agreement:

It is agreed that the within affidavit may be read in evidence in the above cause, as if the same had been taken under commission.

G. L. DULANY,
Attorney for complainant.

Subject to all legal exceptions.

R. JOHNSON,
J. M. CAMPBELL,
For defendants.

Afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-three, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here an agreement in the words and of the tenor following, to wit:

Agreement.

McBlair vs. Oliver's Executors.

Gooding, administrator of Gooding, vs. Same.

Williams, adm'r of Williams, vs. Same.

} Filed 1st Dec., 1853.

It is further agreed that the defendants may read in evidence from the printed record any of the pleadings, evidence, proceedings or decrees, either in Baltimore county court or in the court of appeals, in the

case of Thomas and White against Glenn and others, for any purpose for which the same may be competent evidence of this cause.

G. L. DULANY,
Solicitor for complainant.
J. M. CAMPBELL,
For defendants.

Endorsed agreement.

This agreement applies to this case and to the case of Williams, administrator, vs. Oliver's executors, and to the case of Gooding, administrator, vs. Oliver's executors.

Afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and fifty-three, the court here made and passed the following decree, to wit:

In the circuit court of the United States for the district of Maryland.

CHARLES H. MCBLAIR, administrator of Lyde Goodwin, vs. ROBERT M. GIBBES and Charles Oliver, executors of Robert Oliver. } In equity.

This cause standing ready for hearing and being submitted, the counsel for the parties were heard, and the proceedings read and considered.

It is thereupon, this third day of December, in the year eighteen hundred and fifty-three, by this court adjudged, ordered, and decreed that the bill of the complainant be, and the same is hereby dismissed; and that the complainant pay the defendants their costs of this suit, to be taxed by the clerk.

R. B. TANEY,
WILLIAM F. GILES.

From which said decree, so as aforesaid rendered, the said Charles H. McBlair, administrator as aforesaid, by his solicitors, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, and to him it is granted. Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid—

I hereunto subscribe my name and affix the seal of the said circuit court [SEAL.] this eighth day of December, in the year of our Lord one thousand eight hundred and fifty-three.

THOS. SPICER,
Clerk circuit court.